104
Y 4. B 22/3: S. HRG. 104-869/
V. 11
KF 26
.5
W48
1995

S. HRG. 104–869, VOL. XI

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

DEPOSITIONS

BEFORE THE

SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

ADMINISTERED BY THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

VOLUME XI

ON

THE INQUIRY INTO WHETHER ADMINISTRATION OFFICIALS ENGAGED IN IMPROPER CONDUCT WITH RESPECT TO INVESTIGATIONS AND INQUIRIES RELATING TO WHITEWATER DEVELOPMENT CORPORATION, CAPITAL MANAGEMENT SERVICES, MADISON GUARANTY SAVINGS & LOAN, AND RELATED MATTERS

NOVEMBER 2, 3, 4, 6, 7, 9, 13, 17, 20, 21, AND 27, 1995

Printed for the use of the Committee on Banking, Housing, and Urban Affairs

DEPOSITORY
APR 01 1998
BOSTON PUBLIC LIBRARY
GOVERNMENT DOCUMENTS DEPARTMENT

S. HRG. 104–869, VOL. XI

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

DEPOSITIONS

BEFORE THE

SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

ADMINISTERED BY THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

VOLUME XI

ON

THE INQUIRY INTO WHETHER ADMINISTRATION OFFICIALS ENGAGED IN IMPROPER CONDUCT WITH RESPECT TO INVESTIGATIONS AND INQUIRIES RELATING TO WHITEWATER DEVELOPMENT CORPORATION, CAPITAL MANAGEMENT SERVICES, MADISON GUARANTY SAVINGS & LOAN, AND RELATED MATTERS

NOVEMBER 2, 3, 4, 6, 7, 9, 13, 17, 20, 21, AND 27, 1995

Printed for the use of the Committee on Banking, Housing, and Urban Affairs

U.S. GOVERNMENT PRINTING OFFICE

41–381 CC WASHINGTON : 1997

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-055349-0

SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

ALFONSE M. D'AMATO, New York, *Chairman*

RICHARD C. SHELBY, Alabama
CHRISTOPHER S. BOND, Missouri
CONNIE MACK, Florida
LAUCH FAIRCLOTH, North Carolina
ROBERT F. BENNETT, Utah
ROD GRAMS, Minnesota
PETE V. DOMENICI,* New Mexico
ORRIN G. HATCH, Utah
FRANK H. MURKOWSKI, Alaska

PAUL S. SARBANES, Maryland
CHRISTOPHER J. DODD, Connecticut
JOHN F. KERRY, Massachusetts
RICHARD H. BRYAN, Nevada
BARBARA BOXER, California
CAROL MOSELEY-BRAUN, Illinois
PATTY MURRAY, Washington
PAUL SIMON, Illinois

HOWARD A. MENELL, *Staff Director*
ROBERT J. GIUFFRA, JR., *Chief Counsel*
PHILIP E. BECHTEL, *Deputy Staff Director*
STEVEN B. HARRIS, *Democratic Staff Director and Chief Counsel*

MICHAEL CHERTOFF, *Special Counsel*
RICHARD BEN-VENISTE, *Democratic Special Counsel*
ALICE S. FISHER, *Deputy Special Counsel*
LOUIS J. GICALE, *Deputy Special Counsel*
EVERETT C. JOHNSON, JR., *Deputy Special Counsel*
JAMES B. COMEY, *Deputy Special Counsel*
NEAL E. KRAVITZ, *Democratic Principal Deputy Special Counsel*
LANCE COLE, *Democratic Deputy Special Counsel*

STEVEN BANKLER, *Investigative Accountant*
H. CHRISTOPHER BARTOLOMUCCI, *Associate Special Counsel*
GABRIEL BERG, *Democratic Legal Intern*
JULIUS J. BONAVOLANTA, *Special Investigator*
MARK J. BRENNER, *Assistant Special Counsel*
ROBERT H. BUCHANAN, *Staff Intern*
DAVID CARLE, *Democratic Press Secretary*
WILLIAM S. CASTLE, *Senior Investigator*
LORI A. CONLON, *Administrative Assistant*
VINCENZO A. DELEO, *Special Investigator*
VIET D. DINH, *Associate Special Counsel*
DOUGLAS A. EPSTEIN, *Democratic Counsel*
CHRISTOPHER FARRO, *Staff Intern*
STEVEN H. FROMEWICK, *Democratic Assistant Special Counsel*
SOPHIA HARDY, *Democratic Intern*
NGUYEN-HONG HOANG, *Democratic Legal Intern*
DAVID KAUFMAN, *Staff Intern*
DAVID M. LUNA, *Democratic Law Clerk*
JOSEPH MITCHELL, *Staff Intern*
TIMOTHY P. MITCHELL, *Democratic Professional Staff Member*
MICHAEL P. O'CALLAGHAN, *Associate Special Counsel*
RICHARD J. O'CONNELL, *Special Investigator*
JAMES S. PORTNOY, *Democratic Associate Special Counsel*
JAMES F. REDFERN, *Special Investigator*
ANDREW M. SCHAUER, *Democratic Assistant Special Counsel*
JENNIFER M. SWARTZ, *Senior Investigator*
MEGAN H. TINKER, *Senior Investigator*
AMY R. WENDT, *Democratic Staff Assistant*
JEFFREY H. WINTER, *Democratic Special Assistant*
STEPHANIE H. WOMACK, *Democratic Special Assistant*

---

*Appointed to replace Senator Bill Frist pursuant to S. Res. 184 (October 12, 1995).

PETER C. BARRETT, *Staff Assistant*
YAEL BELKIND, *Democratic Staff Assistant*
SLOAN DEERIN, *Staff Assistant*
MITCHELL FEUER, *Democratic Counsel*
EMILY L. FRYDRYCH, *Assistant to the Democratic Staff Director*
MARTIN J. GRUENBERG, *Democratic Senior Counsel*
MARK D. HOFFMAN, *Executive Assistant to the Staff Director*
GLENN IVEY, *Democratic Counsel*
JOSEPH A. JIAMPIETRO, *Counsel*
JOSEPH R. KOLINSKI, *Chief Clerk/Computer Systems Administrator*
ANDREW LOWENTHAL, *Democratic Professional Staff Member*
DORIS R. MAHONEY, *Executive Assistant*
CHARLES MARR, *Democratic Professional Staff Member*
E. RICHARD MILLS, *Press Secretary*
JOSEPH N. MONDELLO, JR., *Counsel*
PATRICK A. MULLOY, *Democratic Chief International Counsel*
DOUGLAS R. NAPPI, *Counsel*
LENDEL PORTERFIELD, *Financial Institutions Subcommittee Staff Director*
AMY C. RANDEL, *Democratic Staff Assistant*
SARAH BLOOM RASKIN, *Democratic Counsel*
MADELYN SIMMONS, *Professional Staff Member*
PAUL WEECH, *Professional Staff Member*

EDWARD M. MALAN, *Editor*
GEORGE E. WHITTLE, *Editor*
IRENE C. WHISTON, *GPO Editorial Assistant*
DONNA LEE KRAUSE, *GPO Editorial Assistant*

CONTENTS

VOLUME VII

TUESDAY, OCTOBER 10, 1995

	Page
S. Res. 120	1
Clark W. Blight	27
Steven A. Switzer	127

WEDNESDAY, OCTOBER 11, 1995

Jane Ley	217
Robert S. Mueller III	271
Stephen D. Potts	339

THURSDAY, OCTOBER 12, 1995

Patricia M. Black	399
Douglas N. Frazier	561
Anthony Moscota	741

FRIDAY, OCTOBER 13, 1995

Robert P. Cesca	977
Joseph E. Gangloff	1181
Donna O'Dowd	1345

TUESDAY, OCTOBER 17, 1995

George Allen Carver, Jr.	1519
Laurence S. McWhorter	1673

VOLUME VIII

TUESDAY, OCTOBER 17, 1995

Don K. Pettus	1703

WEDNESDAY, OCTOBER 18, 1995

	Page
John D. Arterberry	1803
James M. Cottos	1949
F. Mac Dodson	2097
Donald B. Mackay	2141
Richard M. Pence, Jr.	2297

THURSDAY, OCTOBER 19, 1995

James R. Dudine	2387
Earl Fletcher Jackson	2487
Randy Knight	2585
Gerald McDowell	2657
Stephen J. McHale	2849

FRIDAY, OCTOBER 20, 1995

Clayland Boyden Gray	2983
L. Richard Iorio	3001
John C. Keeney	3147

VOLUME IX

FRIDAY, OCTOBER 20, 1995

Patrick I. Noble	3491
Kenneth R. Schmalzbach [Volume I]	3587

MONDAY, OCTOBER 23, 1995

April A. Breslaw	3779
Charles A. Bank	3933

TUESDAY, OCTOBER 24, 1995

Michael D. Johnson	3999
Robert M. McNamara, Jr.	4117
James G. Thompson, Jr.	4187

WEDNESDAY, OCTOBER 25, 1995

Karen Carmichael	4243
Edward S. Knight	4359

WEDNESDAY, OCTOBER 25, 1995

Page
Keith Wayne Mason 4429

THURSDAY, OCTOBER 26, 1995

John J. Adair 4461
Wayne Foren 4543
Webster L. Hubbell 4735
Ira H. Raphaelson 4829

FRIDAY, OCTOBER 27, 1995

Ellen B. Kulka 4895
Irvin B. Nathan 4937
Kenneth R. Schmalzbach [Volume II] 4997

MONDAY, OCTOBER 30, 1995

Kevin B. Kendrick 5035

VOLUME X

MONDAY, OCTOBER 30, 1995

Laura Jean Lewis [Volume I] 5089
Mark K. Stephens 5233

TUESDAY, OCTOBER 31, 1995

Erskine Bowles 5511
Laura Jean Lewis [Volume II] 5681
Jane C. Sherburne 5853
Fred B. Verinder 5971

WEDNESDAY, NOVEMBER 1, 1995

Paula Casey 6045
William H. Kennedy, III 6179
Francine J. Kerner 6229
Marsha Scott 6417

THURSDAY, NOVEMBER 2, 1995

Page
Neysa L. Day 6447
Ric Doery 6519

VOLUME XI

THURSDAY, NOVEMBER 2, 1995

James M. Lyons 6589
Julie Fry Yanda 6661

FRIDAY, NOVEMBER 3, 1995

Albert V. Casey 6757
Steven D. Irons 6773
Bruce R. Lindsey 6945

SATURDAY, NOVEMBER 4, 1995

W. Neil Eggleston 7011

MONDAY, NOVEMBER 6, 1995

Lloyd N. Cutler 7087
David L. Dougherty 7161
Thomas McLarty 7215
Robert Peter Rittling 7251
John T. Spotila 7301

TUESDAY, NOVEMBER 7, 1995

Sharon E. Conaway 7375

THURSDAY, NOVEMBER 9, 1995

W. Dennis Aiken 7417
G. Randolph Coleman 7431
Larry A. Potts 7517

MONDAY, NOVEMBER 13, 1995

William P. Barr 7591
Charles E. Shepperson 7637

FRIDAY, NOVEMBER 17, 1995

Page
Martin D. Teckler 7673

MONDAY, NOVEMBER 20, 1995

James B. Blair 7869
Brent Bumpers 7903
Cecilia Ryker Seay 7931

TUESDAY, NOVEMBER 21, 1995

Bruce R. Lindsey 7945
Richard L. Mays 8009

MONDAY, NOVEMBER 27, 1995

Edith E. Holiday 8035

DEPOSITION OF JAMES M. LYONS
IN RE: S. RES. 120

THURSDAY, NOVEMBER 2, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of JAMES M. LYONS, called for examination pursuant to notice of deposition, at 5:05 p.m. in Room 534 of the Dirksen Senate Office Building, before MARYBETH PETERS, a Notary within and for the District of Columbia, when were present:

ROBERT J. GIUFFRA, JR., ESQ.
Majority Chief Counsel
ALICE S. FISHER, ESQ.
Majority Associate Special Counsel
LANCE COLE, ESQ.
Minority Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

HAROLD A. HADDON, ESQ.
Hadon, Morgan & Forman, P.C.
150 East Tenth Avenue
Denver, Colorado 80203
On behalf of the Deponent.
(Via Telephone)

ALSO PRESENT: CAROL PATTERSON
Court Reporter (Via telephone)

CONTENTS

WITNESS	EXAMINATION
James M. Lyons	
by Mr. Giuffra	9
Errata	6659

3

PROCEEDINGS

Whereupon,

JAMES M. LYONS

was called as a witness and, having first been duly sworn, was examined and testified as follows:

MR. HADDON: The reporter has sworn Mr. Lyons.

MR. GIUFFRA: Let's begin.

This is a telephone deposition being conducted pursuant to Senate Resolution 120. My name is Robert Giuffra, G-i-u-f-f-r-a. I am the chief counsel of the Senate Banking Committee at this time. I'm in Washington, D.C. Also here in Washington, D.C. with me are Lance Cole who is the Democratic deputy special counsel and also here in Washington is Alice Fisher.

MS. PATTERSON: Can you hear me?

MR. COLE: Harold, this is Lance. I think -- can you hear me? I think on both ends of the call we're going to have to be very careful about moving papers and things around near the mike for the speakerphone because what we're getting is a lot of

4

static from your end. I don't know if you're getting the same thing from our end or not.

MR. GIUFFRA: Also with me is Alice Fisher she is an associate special counsel with the majority staff. Okay. I would like to just go through some basic preliminaries first.

MR. HADDON: There is some background noise that may be conversation or it may be reverberation.

MR. GIUFFRA: I don't believe there is any noise here.

MS. FISHER: This isn't going to work.

MR. GIUFFRA: One concern I have right now just in attempting to do this is it is just quite apparent this is going to be a very difficult way to conduct the deposition.

MR. HADDON: Why don't we roll through it and see how it goes.

MR. GIUFFRA: I just want to make this clear at the outset that this is the first time during the course of proceedings that are being the conducted pursuant to Senate Resolution 120 that we've attempted to do a deposition by telephone and

5

we are doing so as an accommodation to the fact that Mr. Lyons is in Denver, Colorado, which is obviously, you know, a far distance from Washington, D.C.

But I want to make it clear at the outset that the committee may need to have him sit for a live deposition if it turns out that this is not a suitable way to conduct a deposition for purposes of Senate Resolution 120 and also because of the fact that Mr. Lyons has a fairly extensive involvement in some of the matters about which the resolution is concerned and he has produced a fairly substantial amount of documents. And it may well be necessary to have a live deposition because a live deposition will allow us to, you know, for example, show Mr. Lyons particular documents and point out particular matters in the documents.

We will attempt, however, to move forward and see how we can go. Senate Resolution 120 establishes a special committee administered by the Banking Committee of the United States Senate to conduct an investigation and public hearings involving Whitewater Development corporation, Madison

6

Guaranty Savings & Loan Association and Capital Management Services, Inc., the Arkansas Development Finance Authority and other related matters.

This deposition is being conducted in advance of public hearings that the committee is going to hold beginning next week. The procedure we will follow today, which will be the same procedure that is followed in other depositions conducted pursuant to Senate Resolution 120 is as follows. I will ask on behalf of the majority a series of questions, then Mr. Cole will have an opportunity to ask questions and we may have another round of questions after that.

MR. GIUFFRA: Mr. Lyons, you understand that you will be testifying today under oath?

THE WITNESS: I do.

MR. GIUFFRA: If at any time you don't understand a question or are confused in any way, please let us know and we will rephrase the question.

MR. GIUFFRA: Can you hear us?

MR. HADDON: Yes, we can, but not well.

7

MR. COLE: I think the problem may occur -- if you speak in the background on your end, your microphone picks it up, then we can't hear you and you can't hear us. I think we just have to be very careful that only one person speaks at a time and that we pause between persons so that the microphone doesn't cut someone out on the other end out.

MR. HADDON: All right.

MR. GIUFFRA: Again, if at any time you need a break, you know, let us know and we will go off the record. The plan today will be as follows: The stenographer in Washington will prepare a record of the questions and answers. That record will be deemed the official transcript of the deposition. I understand there is also a stenographer in Denver who will also prepare a transcription of the questions and answers.

The deposition will be treated as committee confidential until the commencement of the hearings. You will receive a letter from the committee advising you of your right to review the transcript at the Senate.

8

In addition, if, Mr. Lyons, you are called to testify in public hearings in Washington, we will make a copy of the transcript available to you four days before any public testimony and we would ask that you agree not to disclose that deposition transcript to anyone other than your counsel. You will also have an opportunity to make any corrections to the transcription on an errata sheet.

Now, Senate Resolution 120 specifies a procedure for the conduct of depositions being conducted pursuant to Senate Resolution 120.

Mr. Lyons, do you have a copy of Senate Resolution 120?

THE WITNESS: Yes.

MR. GIUFFRA: You will, I'm sure, note that Senate Resolution 120 specifies the procedure for the conduct of deposition. You have a right to represented by counsel. I understand that you've chosen to be represented by counsel. If Mr. Haddon could state an appearance for the record.

MR. HADDON: Harold A. Haddon, Denver, Colorado.

MR. GIUFFRA: Your objections to the form of the questions could be noted for the record. Counsel can also object on the grounds of privilege or relevance and Mr. D'Amato, the committee chairman, may be asked to rule on objections in the event that the witness refuses to answer a question. Do you have any questions in Denver?

MR. HADDON: No.

EXAMINATION

BY MR. GIUFFRA:

Q Okay. Let's try to begin and see how far we can get. Mr. Lyons, would you please state your name for the record.

A James M. Lyons, L-y-o-n-s.

Q And your present business address?

A My business address is 1200 17th Street, Denver, Colorado.

Q And what is your present position?

A I'm a senior partner in the law firm of

Rothgerber, R-o-t-h-g-e-r-b-e-r, Appel, A-p-p-e-l, Powers & Johnson.

Q Okay. Are you a litigation lawyer or corporate lawyer?

Could you hear that question?

A No.

Q Are you a litigation lawyer or a corporate lawyer?

A I'm not hearing you at all.

Q We will move our phone. Can you hear me now?

A I can hear you.

Q Are you a litigation lawyer or a corporate lawyer?

A I do some of both.

Q Could you just briefly describe the nature of your practice in rough terms?

A I do complex litigation of a civil nature and provide advice to a number of clients in connection with their business affairs.

Q Okay. Where did you attend law school and when did you graduate?

11

A I went to DePaul University College of Law in Chicago, Illinois and I graduated in 1971.
Q Could you just very briefly run through your employment history beginning in 1971?
A I've been with Rothgerber, Appel, Powers & Johnson since September of 1971.
Q That made it very simple.
MR. COLE: That saved at least five minutes.
BY MR. GIUFFRA:
Q Okay. How did you first come to know President Clinton?
A I met Mr. Clinton in the late 1970s in connection with a case I was handling in Little Rock, Arkansas.
Q And what was Mr. Clinton's position at that time?
A He was Attorney General in the state of Arkansas.
Q Okay. How did you first meet Mrs. Clinton?
A I believe I met her through Mr. Clinton. Probably in the late '70s or early 1980s.

12

Q When did you first learn of the Clintons' investment in something called the Whitewater Development Corporation?
A I don't remember exactly.
Q Do you have a rough estimate?
A I beg your pardon?
Q Could you make a rough estimate?
A Well, it would only be a guess.
Q Well, when do you think -- what is your best guess as to when you first learned of their investment in Whitewater Development Corporation?
A Probably sometime in late 1991 or early 1992.
Q And do you recall the context in which you first learned of their investment in Whitewater Development Corporation?
A I think I may have learned about it in connection with the press reports that appeared in The New York Times, but I may also have learned about it in connection with the preparation and filing of the candidate disclosure form in late 1991. I just don't remember.

13

Q Okay. During the 1980s, what was the nature of your relationship with the Clintons?
A They were friends of mine. I was a political supporter of his when he ran for governor. And Mrs. Clinton and I were, her firm and mine had some dealings in terms of referrals of matters. I would see them when I was in Little Rock, sometimes when we were in Washington on business the President, Mr. Clinton, would come to Denver from time to time on gubernatorial business, National Conference of Governors meets here fairly often. And I would talk to him from time to time and exchange notes and correspondence with him.
Q Did you also know Webster Hubbell during the 1980s?
A I believe I first met him in the late 1980s.
Q And have you ever worked on any litigation matters with Mr. Hubbell?
A Not to my knowledge. Not that I remember.
Q Okay. When did you first meet Vincent Foster?

14

A I think I met him also sometime in the late 1980s.
Q Did you ever work on any litigation matters with Mr. Foster?
A I don't think so.
Q Okay. Do you recall who, if anyone at the Rose Law Firm you would have worked on any matters with?
A Well, other than Mrs. Clinton.
Q Were you co-counsel with Mrs. Clinton in any litigation matters?
A No, no, no. I remember she referred a litigation matter perhaps even more than one to me. I just can't remember when that was but it was a matter here in Colorado.
Q Okay. When did you first meet Bruce Lindsey?
A I think I would have met Mr. Lindsey sometime in the early to mid-1980s.
Q What was the nature of your relationship with Mr. Lindsey during the 1980s?
A We became friends.

15

Q Okay. Have you ever served as co-counsel on any matters with Mr. Lindsey?
A No, although I have with his firm, his former firm.
Q And that's the Wright, Lindsey firm?
A Yes.
Q Now, are you aware of -- you received a subpoena from the Banking Committee?
A I have.
Q And --
A To which I have responded.
Q And have you searched for documents that might be responsive to that subpoena?
A Yes.
Q And, to the best of your knowledge, have all responsive documents been produced?
A I believe so. I responded on September 27th to Mr. Kolinski and then --
Q That's K-o-l-i-n-s-k-i.
A And then later -- early this week or late last week I received a formal subpoena which had asked me again to review my records to see if I have

16

anything else. And I'm in the process of doing that.
Q Okay. Other than your counsel, have you spoken to anyone prior to this deposition about the fact that you will be being deposed today?
A Well, yes, I have.
Q Who have you spoken to?
A I beg your pardon?
Q Who have you spoken to?
A Well, I spoke to my wife. Probably several of my law partners. I've spoken with Mr. David Kendall and I probably mentioned it also to Mr. Lindsey.
MR. COLE: I would also note for the record -- this is Lance Cole speaking -- that I spoke twice with Mr. Lyons about the logistics and scheduling for this deposition.
THE WITNESS: That's true.
BY MR. GIUFFRA:
Q What did you discuss with Mr. Lindsey about this deposition?
A Nothing other than the fact that it was

17

being taken.
Q Did Mr. Lindsey indicate to you that he was being deposed by the Senate?
A I beg your pardon.
Q Did Mr. Lindsey indicate to you that he was being deposed by the Senate?
A I don't remember if he did or not.
Q When did you speak to Mr. Lindsey?
A A couple of days ago.
Q And it would be your testimony you don't recall whether you -- Mr. Lindsey indicated to you that he would be -- he was being deposed by the Senate?
A I don't remember if he did or not. I would assume he was.
Q Okay. I would like to turn your attention first to the 1992 Clinton Presidential campaign?
A All right.
Q Before I go into that let me ask one other question. What did you discuss with Mr. Kendall about the fact that you were being deposed here today?

18

A I regard that as privileged.
Q What would be the basis for the privilege?
A It is an attorney-client privilege.
Q Are you -- is he your attorney?
A No, he is not.
Q He is the Clintons' attorney; correct?
A I beg your pardon.
Q He is the Clintons' attorney; correct?
A He is indeed.
Q Do you also have an attorney -- are you now an attorney for the Clinton?
A I regard myself as having an attorney-client relationship with them with regard to this matter, yes.
Q Okay. Okay. Turning to the 1992 Presidential campaign. Did you have a role during that campaign?
A I did; I had several roles.
Q What role did you perform in connection with that campaign?
A Pardon. Could you repeat the question?
Q Yeah. What roles did you perform in

19

connection with the 1992 Presidential campaign of Governor Clinton?
A In terms of professional role as a lawyer I served as sort of ad hoc chair of a group of lawyers from around the country who provided support and volunteer legal advice and services to the campaign, and its then acting general counsel.
Q And who was the acting general counsel?
A David Ipshen.
Q Who were other members of this ad hoc group of lawyers?
A They quoted Jim Hamilton from Washington, D.C., Austin Johnson from Baton Rouge, Louisiana, and at one time John Smith from Chicago, Illinois, Tom Williamson from Washington was also involved as was Rene Ring from New York and there may have been others at various times.
Q Was Mr. Hubbell part of this ad hoc group?
A No.
Q Was Mr. Foster a member of this ad hoc group?
A I beg your pardon.

20

Q Was Mr. Foster a member of this ad hoc group?
A No.
Q Was Mr. Lindsey a member of this ad hoc group?
A Who, Bruce Lindsey?
Q Yes.
A No, although he may have participated in our discussions from time to time.
Q Okay. Was Mr. William Kennedy a member of this ad hoc group?
A No.
Q Okay. During the '92 Presidential campaign did you play any role in connection with the preparation of President Clinton's, then Governor Clinton's, financial disclosure forms?
A Other than the extent to which they were effective or it was effected by an analysis we'd done of a real estate investment in Whitewater Development Corporation, no, I really don't think I did. That was marginally Mr. Hamilton's responsibility.
Q So he was the person who handled the actual

preparation of the financial disclosure form?
A I don't know who did the actual form. It was signed and filed itself.
Q But it's your understanding that he had some role in that process?
A Yes, yes.
Q Did you review any drafts of the financial disclosure form?
A I don't recall. I may very well have.
Q Okay. Do you recall ever discussing with anyone whether the President should list anywhere in this financial disclosure form his investment in Whitewater Development Corporation?
A I'm sure there -- yeah, I'm sure we had discussions about that.
Q What do you recall about those discussions with regard to whether Governor Clinton should list Whitewater Development Corporation on his financial disclosure form?
A Well, I recall it being discussed and I believe it was listed.
Q Okay. Is it your understanding that his

investment in Whitewater Development Corporation was listed on the initial financial disclosure form that he filed when he first announced that he was running for President in the fall of 1991?
A I don't know but I don't think it was.
Q Okay.
A It was a fairly nominal investment and it may have been overlooked. I just frankly don't remember.
Q Do you have any understanding as to why the governor's investment in the Whitewater Development Corporation was not included on his initial financial disclosure form?
A No, other than the fact, as I said, it was nominal and may have been overlooked, no.
Q Why do you believe it was nominal?
A Well, I think based on what we learned in terms of the value of the asset, if in fact it was ever an asset, it was de minimis at the time.
Q Do you recall any analyses being done in the later part of 1991 as to the value of the President's investment in Whitewater Development

23

Corporation?
A No.
Q Do you recall any discussions of any nature in -- during 1991 with regard to the value of the President's investment in the Whitewater Development Corporation?
A I really don't. There may have been but I do not remember.
Q Okay. Now --
MR. COLE: Let's go off the record for a moment if we could.
MR. HADDON: Could you hold on just a minute.
Off the record.
(Discussion off the record.)
MR. GIUFFRA: Let's go back on the record.
MR. HADDON: Just one second.
Back on the record.
MR. GIUFFRA: This is back on the record. This is just a concern because of the fact that we are doing this by telephone. I'd like a representation from you, to the extent that you want

24

to confer with Mr. Lyons, pass notes to Mr. Lyons, you know, that we be made aware of that fact because we are not in the room with you all, as would be the case in a standard deposition.
MR. HADDON: Mr. Lyons and I haven't passed any notes to this point in time.
MR. GIUFFRA: And to the extent that you are going to confer, if you could just let us know when you are going to confer because obviously there's a difference between someone conferring while a question is pending and after a question has been answered, as I'm sure you both well know.
MR. HADDON: None of that has been done.
MR. GIUFFRA: Okay. That's fine. Okay. Let's start again with the questions.
BY MR. GIUFFRA:
Q Mr. Lyons, have you ever reviewed the -- any of the financial disclosure forms Governor Clinton filed in connection with the '92 Presidential campaign?
A I have, yes.
Q Okay. Are you aware that on that

25

disclosure form there is a provision made for the disclosure of liabilities?
A I believe there is.
Q Okay. Do you recall any discussion with regard to whether the President's investment in Whitewater Development Corporation should be listed as a liability on his 1992 Presidential campaign disclosure form?
A No, I really don't.
Q Do you recall any discussion during the '92 Presidential campaign of a loan that the President had with the Perry County Bank in Perryville, Arkansas?
A I remember that such an obligation existed.
Q Do you recall anything further about this obligation and its disclosure on then-Governor Clinton's financial disclosure form in 1992 or '91?
A I know it was amended or I believe it was amended in 1992 but I don't have those documents in front of me.
Q Do you recall any discussion, though, about the process by which the financial disclosure form

26

was amended to reflect the Perry County loan?
A No.
Q Okay. And again your testimony with regard to Whitewater would be you don't recall any discussions regarding the amendment of the Governor's disclosure forms to reflect his investment either as an asset or a liability in Whitewater Development Corporation?
A As I think I told you, I remember that an amendment or a supplement was prepared and filed but I don't remember the discussions surrounding it.
Q Okay. During the '92 Presidential campaign, did you discuss, did you ever discuss with Governor Clinton his investment in Whitewater Development Corporation?
A Yeah. Yes.
Q Okay. What do you recall about the substance of those discussions?
A Basically set out in the notes that I provided you and provided to the Office of Independent Counsel and the Justice Department. I really don't have much better recollection than that.

27

Q Okay. I think what we may do is at a later deposition, we'll go through those notes with you being present. That probably makes the most sense.

MR. HADDON: You have them here by Bates number if you want to do it in this format.

MR. GIUFFRA: I don't think this is a suitable format to probably go through the notes.

BY MR. GIUFFRA:

Q Let me ask another question. Did you also discuss with Mrs. Clinton the -- her and Governor Clinton's investment in the Whitewater Development Corporation?

A Yes.

Q Do you recall anything about the substance of those conversations?

A Basically the same answer. My notes would be helpful to me in refreshing my recollections about those things but I do recall having discussions with her about that.

Q Okay. Maybe the thing to do is -- what we'll do is let's try to move into events that occurred for the most part in '93 and '94 which are

28

the focus of the very upcoming hearings, and we will come back to this the '92 campaign at a later point.

MR. COLE: And I would note for the record that that was at least my understanding of what we were going to do here today, and that's why I was amenable to the idea of telephone deposition. So hopefully we can accomplish that and then, if necessary we could later have a face-to-face deposition at a later time.

MR. GIUFFRA: It's just -- I think it is too much to deal with by the telephone.

MR. HADDON: We reserve our objections to having multiple depositions too.

MR. GIUFFRA: If you want to reserve your objection I think what I probably would do right now is just cancel the deposition and have a subpoena issued for Mr. Lyons to come to Washington next week.

MR. HADDON: We wouldn't be there because I'm out of the country and I think he's otherwise engaged. But why don't you talk now. We do have all of these documents in front of us by Bates stamp number I think it is pretty easy to make reference to

29

them.
MR. GIUFFRA: Mr. Cole. Let Mr. Cole speak for the record now.
MR. COLE: Well, what I would suggest doing is focusing this deposition on the subjects that are set for the upcoming round of hearings, and I don't know that we have the time available today or the circumstances are appropriate for reviewing all the documents. I just don't think that we could do that in this deposition.
MR. GIUFFRA: You produced how many pages of documents, Lance?
MR. COLE: Hundreds if not thousands.
MR. GIUFFRA: And I don't think doing this by telephone deposition by 5:40 in the afternoon Eastern time is conducive to a proper deposition. I would also note for the record that witnesses have come from as far as California for depositions and I think that is probably the appropriate way to do this. So why don't we try to deal with the '93, '94 issue.
If you want to object to having a second

30

deposition my inclination would be just to stop at this point and then if necessary get a subpoena and have you come, you know, next week.
MR. HADDON: We are not available next week but why don't you proceed.
MR. COLE: I also think Mr. Lyons is not the only witness who may be called for more than one deposition. In fact we've already had some witnesses who have been deposed twice. So this is not a unique issue and I think it's one that we needn't try to resolve on the record today.
MR. GIUFFRA: I'm not going to proceed if Mr. Haddon doesn't agree to a later deposition. Where we can actually do this face to face because we're doing this as an accommodation to Mr. Lyons. If that's not acceptable, you know, the Senate obviously has its legal responsibility and, you know, we will get a subpoena and if you, you know, don't want to comply with the subpoena then we can try to enforce the subpoena.
MR. HADDON: Why don't you proceed.
MR. GIUFFRA: Do you have an objection to a

31

later deposition?
MR. HADDON: At this point.
MR. GIUFFRA: Not at this point. Either yes or no, that's the answer I'm looking for. You could give me a yes or a no answer. Do you have an objection to a later deposition in view of the fact that doing this by telephone is not a suitable way of going through thousands of pages of documents?
MR. HADDON: I don't agree with your characterization and I think you are being argumentative, but we understood from the beginning that there would likely be another deposition with respect to I would characterize as Whitewater issues so I think you are wasting a lot of time squawking about the telephone. Why don't you proceed.
BY MR. GIUFFRA:
Q Okay.
MR. HADDON: But.
BY MR. GIUFFRA:
Q Mr. Lyons, during the later half of 1992 -- strike that.
During the campaign, did you gather

32

documents relating to Whitewater Development Corporation?
A Yes.
Q We could barely hear that one.
A Yes.
Q Okay. After the election, did you have any discussion with anyone about the disposition of those documents that you had collected regarding the Whitewater Development Corporation during the '92 campaign?
A I'm sure I did, basically the documents and records which I had -- basically the documents and records which I had collected -- I kept copies of the documents and records which I used after the, after the campaign.
Q Did you provide copies of any of those documents to anyone?
A Well, I provided them under subpoena to the Department of Justice, to the Office of Independent Counsel on at least two occasions, some copies were provided of materials to Congressman Clinger's committee and of course I provided documents to your

committee.
Q Have you provided us with a complete set of the documents that you now have in your possession, custody or control relating to Whitewater Development Corporation?
A No, I have not.
Q And why have you not provided us with a complete set of those documents?
A They've not been asked for. I provided those documents which are responsive. I've also given a complete set of the documents to David Kendall which he in turn as I understand it provided to you as well.
Q I just don't understand how given the breadth of the documents called for by the subpoena that the documents that you had on Whitewater Development Corporation would not be responsive?
A That wasn't the question. I didn't understand or at least I didn't understand it to be the question. I thought you asked for campaign documents. Your question called for campaign documents.

Q We didn't delineate between campaign and noncampaign documents?
A The Whitewater documents which I had have been provided to your committee and the Department of Justice, to the Office of Independent Counsel, and to the House of Representatives as well as to Mr. Kendall.
Q And have you provided them to us?
A Yes.
Q Okay. What about the campaign documents that you gathered -- your campaign-related documents?
A No, I've not provided those.
Q And what is the grounds for not providing those documents to the committee?
A First of all they had not been asked for, and secondly in many cases relate to other matters which are privileged.
MR. COLE: For the record, Mr. Giuffra's question I believe relates to campaign documents concerning or relating to the Whitewater Development Corporation as opposed to any other campaign documents that you might have; is that correct,

35

Mr. Giuffra?
MR. GIUFFRA: That's correct.
BY MR. GIUFFRA:
Q And I'm wondering whether all documents you have that were prepared or created during the '92 Presidential campaign and that relate to Whitewater Development Corporation have been turned over to the Senate Banking Committee?
A Yes, either by me or by Mr. Kendall.
Q Okay. So what you are saying is that there are documents that were created during the campaign not relating to Whitewater that you haven't turned over?
A That's true.
Q Okay. That's all I wanted, a point of clarification.
All right. Did you discuss -- strike that.
Did you provide any documents in late 1992 relating to Whitewater to Webster Hubbell?
A No, I don't believe so.
Q Did you provide any documents in late 1982

36

to Vincent Foster relating to Whitewater?
A Yeah, I probably did. To the extent he didn't already have a copy of the report which I had written I may have provided it to him in the fall of 19 -- or late fall of 1992.
Q Do you recall providing any other documents to Mr. Foster?
A Relating to Whitewater?
Q Yes.
A No, I don't.
Q Did you provide any documents relating to any other subject to Mr. Foster in late 1992 that to the best of your knowledge he brought with him to Washington?
A I don't know if he brought them to Washington with him or not. During -- after the election and before the inaugural, I served as counsel to -- one of several, to the office of the President elect and to the vice president elect and Mr. Foster was serving in the same capacity. We had fairly regular contact and communications, not about Whitewater.

37

Q Do you recall any discussion during the period of transition regarding Whitewater?
A I recall a discussion in connection with putting the -- or series of discussions perhaps in terms of putting the President and Mrs. Clinton's assets into a blind trust during the term of his presidency and in that connection I suspect we probably talked about what to do about Whitewater.
Q Do you recall anything about those discussions regarding what to do about Whitewater?
A I think our view was to try to sell it, my view and Mr. Foster's.
Q Do you recall any discussion with President Clinton about selling his interest in Whitewater Development Corporation?
A Not specifically, no. I don't.
Q Generally?
A No, I really can't say that I did.
Q Do you recall any discussions with Mrs. Clinton about selling the First Couple's interest in Whitewater Development Corporation?
A No, not specifically.

38

Q Generally?
A Well, it was an option. I mean there were a number of assets and things that needed to be dealt with. And I feel fairly confident it probably came up. What was said by whom, I just don't remember.
Q So your testimony to summarize would be that you recollect some discussion with Mrs. Clinton about selling the Whitewater investment?
A No, that isn't what I said, Counselor. What I said was we may have discussed it. I have no general -- no specific recollection.
Q Okay. All right. Between January 20, 1993 and July 20, 1993 did you have any discussions with Vincent Foster about Whitewater Development Corporation?
A Yes.
Q Okay. Could you please state for the record the substance of those discussions -- strike that.
When do you recall discussing Whitewater Development Corporation with Vincent Foster between January 20, '93 and July 20, '93?

39

A I recall discussions with Vince about closing of the interest in Whitewater and part of that being that tax returns that had not yet been filed for Whitewater were in fact properly prepared and filed in a prompt fashion.
Q Do you recall approximately how many communications you had with Mr. Foster about Whitewater Development Corporation during the period when he was deputy counsel to the President?
A No.
Q Do you recall whether it was, you know, more than five or less than five?
A No.
Q Was this a frequent -- strike that.
Between January 20th, 1993 and July 20, 1993, were you in frequent contact with Mr. Foster?
A I'm not sure I know what you mean by frequent, but we talked fairly regularly.
Q About how regularly?
A Oh, I don't know.
Q Once a week? Twice a week? Once a month?
A Oh, it would be more than once a month

40

generally.
Q Okay. Would it be more than once a week?
A I don't think so. Generally. There may have been times when we talked more than once a week but I don't think that was a -- what you could characterize as a general practice.
Q Okay. Prior to Mr. Foster's death, do you recall discussing Whitewater Development Corporation -- strike that.
Between January 20, '93 and July 20, 1993, do you recall discussing Whitewater Development Corporation with Bruce Lindsey?
A Yes.
Q And what do you recall about your discussions with Mr. Lindsey about Whitewater Development Corporation?
A The same sort of general discussion as I had with Vince about what to do with it.
Q What do you -- do you recall anything about the substance of your communication with Mr. Lindsey during this period?
A Other than that, no, I really don't.

41

Q During the same period, January 20, '93 and July 20, '93, do you recall any discussions with Webster Hubbell about Whitewater Development Corporation?
A No.
Q Do you know if you ever spoke to Webster Hubbell about Whitewater Corporation at any time?
A Well, I'm sure I have.
Q But you -- your testimony is that you don't recall speaking with him during the January 22-July 20 period, 1993?
A No, I just don't recall specific discussions with him. It may have come up but I have no specific recollection of any discussion with him about that.
Q All right. Between January 20, 1993 and July 20, 1993, do you recall any discussions about Whitewater Development Corporation with Bernard Nussbaum?
A No, I don't.
Q Have you ever discussed Whitewater Development Corporation with Bernard Nussbaum?

42

A Yes.
Q Okay. When do you recall discussing Whitewater Development Corporation with Bernard Nussbaum?
A On a number of occasions basically in the fall and early winter of 1993 and 1994.
Q In what context do you recall speaking with Mr. Nussbaum about Whitewater Development Corporation during the fall and winter of 1993, 1994?
A I don't know what you mean in what context.
Q Do you recall why you were speaking to Mr. Nussbaum about Whitewater Development Corporation in the fall and winter of '93 and '94?
A Well, the question of the Whitewater Development Corporation basically was resurrected by the press sometime in the summer or thereabouts of 1993. It had become something of a news item if not an issue and I would suspect it was in that regard that I had conversations with Mr. Nussbaum.
Q Do you recall whether Whitewater Development Corporation became an issue with the press prior to Mr. Foster's death or after

Mr. Foster's death?
A I think it was after.
Q Do you recall approximately how soon after Mr. Foster's death Whitewater Development Corporation became an issue with the press?
A No, I really don't. In my mind and memory it coincides with the indictment of a fellow named David Hale and I don't remember exactly when -- or on the impending reports of n indictment about him in the press I just don't remember exactly when that was but my recollection, best recollection, is it was sometime in the summer of '93.
Q Okay.
A I just can't tell if it was before or after.
Q Okay. When was the first time you ever heard the name David Hale?
A When I read a press story about him.
Q Do you recall when you might have read that press story?
A Sometime in the summer of 1993.
Q And do you recall the newspaper you would

have read this press story in?
A No. Wire service report. I just don't remember.
Q You were aware, are you not, that Mr. Hale was the head of something called the Capital Management Service.
A I am now, yeah.
Q Okay. And to the extent that you have any documents relating to Mr. Hale or Capital Management Services, they have been provided to the committee?
A I don't but --
Q But you understand that the subpoena calls for such documents?
A I understand that.
Q Okay. During the summer of 1993, did you discuss David Hale with Wayne Kennedy?
A I don't think so.
Q Have you had a discussion with -- strike that.
Do you know a man named Randy Coleman?
A No.
Q Have you ever heard of the name Randy

45

Coleman?
A I understand him to be or to have been Mr. Hale's lawyer. That's all I know about him.
Q Have you ever spoken to anyone about the fact that Mr. Coleman contacted Mr. Kennedy in the summer of 1993 with regard to David Hale?
A I don't think so.
Q And it would be your testimony that you never spoke to Mr. Kennedy about the fact that Mr. Coleman had contacted Mr. Kennedy about -- with regard to David Hale?
A I'm not sure I understand your question.
Q Let me rephrase it. It's hard to do things by this telephone. All right. Have you ever spoken with Mr. Kennedy about any phone call that he received from Mr. Coleman regarding David Hale?
A No, not that I can -- no.
Q All right. Have you ever spoken with Webster Hubbell about any phone call that Mr. Hubbell received from Mr. Coleman?
A I don't think so.
Q Okay. All right. I would like to call

46

your attention to a document that hopefully you all will be able to get a copy of there. It bears the Bates number JML 2432?
A 432.
Q Yeah.
A I have it.
Q Okay. I would like you to look at 2432 and 2433.
A All right.
Q Okay. Have you ever seen this document before?
A Yes.
Q Okay. Just for the record, this is a fax cover sheet from Les Patten to you, James Lyons, dated 9/23/93 and the date -- the time of it is 1142 hour, I presume, a.m.
A I hope it was a.m. Yes. I used to work in New York so that would be just when business is starting in New York at night.
Q Who is Les Patten?
A Les Patten is a certified public accountant and financial consultant in Denver, Colorado.

47

Q Okay. And what is the nature of your relationship with Mr. Patten?
A He's a friend of mine and we have had a professional relationship for a number of years.
Q And in connection with the 1992 Presidential campaign, did Mr. Patten provide any services to the campaign of then Governor Clinton?
A Yes, he did. At my request he did a financial reconstruction of Whitewater Development Corporation from the then available books and records.
Q Okay. Do you have any recollection as to why Mr. Patten was sending you this fax on September 23rd, 1993?
A No, other than the fact that we were attempting at that time to respond to a -- excuse me, various press inquiries that were being made.
Q What do you recall about those press inquiries?
A There were some questions being asked about the work that we had done and we were trying to provide answers as we were directed to do.

48

Q And whom were the press inquiries coming from?
A Well, I recall dealing with several reporters at the Washington Post. I also recall a conversation, more than one, with someone from the Chicago Tribune, the Associated Press and the L.A. Times and others. I am really trying to understand our report.
Q So the inquiries had to do with the report that you had prepared during the 1992 Presidential campaign with regard to the President and Mrs. Clinton's investment in Whitewater Development Corporation?
A That would be my best recollection as to why Les would have done this.
Q Do you recall whether you would have been speaking to anyone at the White House with regard to these press inquiries?
A Not aside of Bruce Lindsey.
Q Was Mr. Bruce Lindsey your primary point of contact with regard to these press inquiries in the '93 period?

A I think that is a fair characterization.
Q Was there anyone else at the White House you would have been interacting with in regard to these Whitewater press inquiries?
A I may have talked to a John Podesta, excuse me, and perhaps others but principally my conversations along these lines would have been with Mr. Lindsey.
Q Since January 20th, 1993 what has been the extent of your contact with President Clinton?
A With regard to Whitewater?
Q Just generally.
A I see him from time to time. I talk to him from time to time.
Q Would you say that you speak with the President on a monthly basis or less than a monthly basis?
A In a month, some months more than others.
Q So more than once a month on average?
A Well, I wouldn't say that. Some months I don't talk to him at all.
Q How frequent is your contact on average

with Mrs. Clinton?
A I probably see her and have contact with her a little less frequently than I do with him.
Q So less than, less than once a month?
A If that. Again it depends on the month. There may be months when it may be a number of times and may be months when it is relatively few if at all.
Q Have you ever spent the night at the White House?
A I have.
Q How many times approximately?
A Three or four.
Q Do you recall the approximate dates upon which you would have spent the night at the White House?
A Not off the top of my head, no.
MR. COLE: I have a question, Mr. Giuffra, about this line of question as to how it relates to the subject matter in Senate Resolution 120.
MR. GIUFFRA: Just trying to ascertain the nature of Mr. Lyon's relationship with President and

51

Mrs. Clinton.
BY MR. GIUFFRA:
Q Just before we go further let me ask you a couple of questions. At the time of Vincent Foster's death, did you have discussions with anyone about documents contained in his office?
A No.
Q All right. Did you ever speak to Mr. Nussbaum about the procedures that -- strike that.
Did you ever -- strike that.
It will be your testimony that you never spoke to Bernard Nussbaum about documents contained in Mr. Foster's office?
A No, and that wasn't the question that you asked me. I recalled speaking with Bernie after, some weeks after Vincent's death about what he had done in order to provide access to the investigators to Vincent's files and offices.
Q And what did he say to you about what he had done to provide access to the investigators to Vincent's files and office?

52

A I remember that he described the procedure which had already been publicly reported.
Q So you had no role in -- strike that.
Prior to search that was conducted -- strike that.
A You're asking me if I was involved in the events surrounding the search of Vincent's death after his suicide. The answer is no.
Q Okay. So you never discussed -- let me ask another question.
On January 21st, 22nd, or 23rd, did you speak to Mr. Nussbaum.
MR. COLE: Do you mean July?
MR. GIUFFRA: July, excuse me.
THE WITNESS: Do you mean July?
BY MR. GIUFFRA:
Q Yes. July 20th through 22nd, 1993 did you speak to Mr. Nussbaum?
A I think I did.
Q What do you recall about your discussions on July 20th, 21st, or 22nd, 1993 with Mr. Nussbaum?
A I recall having discussions with him at

53

Vince Foster's --
Q At the funeral -- we can't hear you.
A Yes.
Q I think the funeral was later than July 22nd?
A That's the first time I recall talking to Bernie after Vincent's suicide.
Q Have you ever had any discussions with Susan Thomases about documents contained in Mr. Foster's office?
A No.
Q Have you ever had any discussions with the First Lady about the documents contained in Mr. Foster's office?
A No.
Q Have you ever had any discussions with Maggie Williams about the documents contained in Mr. Foster's office?
A No.
Q Have you ever had any discussions with President Clinton about the documents contained in Mr. Foster's office?

54

A No.
Q The answer is no?
A The answer is no.
Q Have you ever had any discussions with Bruce Lindsey about documents contained in Mr. Foster's office?
A Yes.
Q And what do you recall about your discussions with Mr. Lindsey about documents contained in Mr. Foster's office?
A They were discussions probably months after the events.
Q And what was the substance of the communication you had with Mr. Lindsey about documents contained in Mr. Foster's office?
A I don't remember. I think it was a -- it may have come up in conversations we were having.
Q Do you recall how it came up in conversations you were having?
A No, I don't recall.
Q Do you recall anything about the substance of those communications between yourself and

55

Mr. Lindsey with regard to documents contained in Mr. Foster's office?
A Other than what I told you, no, I do not.
Q Turning your attention to, again back to JML 2432, JML 2433, the document contained on page 2433, do you remember when that was prepared?
A No. I didn't prepare it.
Q Did you direct Mr. Patten to prepare it?
A I probably asked him to do it.
Q Do you know whether you asked him to prepare the document during the 1992 Presidential campaign or after that?
A No, it would have been after.
Q Was this document prepared in the summer of 1993?
A No, I don't remember. It bears a date of September 23rd and I assume that it was prepared at or about that time.
Q And do you recall anything about the circumstances under which you would have asked Mr. Patten to prepare this document?
A Other than what I've already told you, no.

56

Q You have haven't really said anything about the circumstances under which you prepared the document?
A Not correct. I told you I thought it was prepared to respond to press inquiries. That was and is my answer.
Q Do you recall anything more about the circumstances under which this document was prepared?
A No.
Q Do you recall if Mr. Lindsey asked you to prepare this document?
A No, I don't recall.
Q Let me direct your attention to page 2433, top right-hand margin, it says Madison Marketing. What does that refer to?
A Madison Marketing was I recall an affiliate of Madison Guaranty insofar as it was either controlled or operated by Ms. Susan McDougal.
Q Was Madison Marketing the same as an entity called Master Marketing?
A I don't know.
Q Have you ever heard of an entity called

57

Master Marketing?
A I have.
Q What do you know about Master Marketing?
A It was an entity that at one point, as I recall, had some relationship, by virtue of an advance or more than one advance to Whitewater Development Corporation.
Q We can't hear you.
A It may have been Madison Marketing. I really don't recall much about Master Marketing.
Q Could it be that Master Marketing and Madison Marketing are the same entity?
A It could be.
Q Sitting here today, would that be your best recollection?
A That would be a guess. I don't think I would dignify it by calling it a recollection.
Q So you are not sure whether Master Marketing and Madison Marketing are separate; correct?
A I'm not sure if they are separate or the same.

58

Q Sitting here today, what is depicted on this analysis on page 2433, what sort of a summary is it?
A As it says, it is a summary of transactions with McDougal and Madison Marketing for the fiscal year or fiscal period indicated May 31, '85 and '86.
Q And what -- this is one of the difficulties with doing this by telephone. What is indicated to you under the heading Madison Marketing 0 and then it says 5566.39 going down. If you could just sort of to the best of your ability.
A What it indicates to me is that there was money from Madison Marketing that was advanced to Whitewater Development Corporation in 1984.
Q And this is in November of 1984?
A That's what the exhibit indicates, yes, and that it was repaid in May of 1986 so that by fiscal year end 1986 there was no money due and owing from Whitewater to Madison Marketing.
Q Do you recall any discussions during 1993 about Madison Marketing?
A Not specifically, no.

59

Q Okay. Okay. If you could just, if you could, provide a similar analysis of the right-hand column under the heading James B. McDougal?
A What it suggests to me is that as of the beginning date which is May 31st, 1984, had loaned or advanced to Whitewater Development Corporation some $1381. He made additional advances of 200,280 and $400 as indicated from Whitewater. Characterized as a repayment of $25,000. With the result that as of the end of that fiscal year according to the source materials that was used for this exhibit was owed by Whitewater some $22,738.60 the next year it appears he made advances to Whitewater of $1500, $1200, $7500, and $17,183.58. He made withdrawals or repayments totaling $500 so that the net balance was $4144.98 as of May 31st, 1986.
MR. COLE: Let's go off the record for a moment. The court reporter needs to change the tape here.
MR. HADDON: Do you have any idea how much longer we're going to be, by the way?
MR. COLE: Probably another hour at least.

60

(Discussion off the record.)
BY MR. GIUFFRA:
Q Mr. Lyons, when did you first learn that Mr. Hale was indicted?
A Sometime in the summer of 1993.
Q Do you think you learned the same day he was indicted?
A I beg your pardon?
Q Do you think you learned on the same date that he was indicted?
A I don't know.
Q Do you recall who told you that Mr. Hale had been indicted?
A I think I read it in the press.
Q Okay. Do you -- do you know whether there is any connection between this analysis that Mr. Patten prepared and the indictment of David Hale?
A No.
Q There isn't?
A I don't believe there is.
Q Okay. When did you first learn of RTC criminal referrals relating to Madison?

61

A Sometime in early October of 1993.
Q How did you learn of RTC criminal referrals relating to Madison?
A Either Jim Blair or Loretta Lynch called me to tell me that Jeff Gerth of the New York Times had contacted both of them.
Q Okay. Who was Mr. Blair?
A Blair is a lawyer in Arkansas.
Q And he -- where is he employed?
A I think he has a law firm in Springvale, Arkansas but he also, I think, serves as the general counsel to Tyson's Foods.
Q What role, if any, has -- strike that.
What role, if any, has Mr. Blair played in connection with the Clintons' investment in Whitewater Development Corporation?
A Mr. Blair was generally our contact with Mr. McDougal, Mr. McDougal's lawyer, a fellow named Sam Heuer.
Q When to your knowledge did Mr. Blair first have any role with regard to Whitewater Development Corporation?

62

A Well, he was probably involved when the issue first came up back in -- during the campaign.
Q Did -- at that time what actions, if any, did Mr. Blair take concerning Whitewater Development Corporation?
A He assisted, as I said, in gathering information and facts so that we could hopefully reconstruct the affairs of Whitewater.
Q Did he make contact with Mr. Heuer in order to obtain the documents that Mr. McDougal might have in his possession relating to Whitewater?
A I think he did. Principally he would contact Heuer when we had questions that we hoped Mr. McDougal would be willing to answer.
Q So he sort of acted as a go-between between the campaign and Mr. McDougal?
A I think he was more than that. Ethically we could not contact Mr. McDougal directly because he was represented by counsel. Mr. Blair knew Mr. Heuer and we thought it was frankly the most convenient way to the communicate.
Q So the communications went from Mr. Blair

63

to Mr. Heuer?
A I think that is right. Loretta Lynch may have had some contact with Sam Heuer as well, but principally, at least in my recollection, it was Jim Blair who did that.
Q Have you ever met James McDougal?
A No, I never have.
Q Do you know whether Mr. Blair met with Mr. McDougal during the course of the 1992 Presidential campaign with regard to Madison or Whitewater?
A Without Mr. Heuer?
Q No, with Mr. Heuer being present?
A I don't know. I know he met with and talked to Sam Heuer. He may have also met with and talked to Mr. McDougal.
Q But you have no knowledge as to whether he actually did speak with Mr. McDougal?
A No, I don't.
Q Okay. Now, it is your testimony that you learned of RTC criminal referrals relating to Madison/Whitewater in October of 1993; correct?

64

A That's right.
Q And you would have learned from Mr. Blair and/or Loretta Lynch?
A Who in turn had been informed by Jeff Gerth.
Q And Loretta Lynch played a role with regard to Whitewater during the campaign?
A That's right.
Q Where was she employed in 1993?
A I believe she was with a law firm in San Francisco.
Q Okay. At the time of the Patten fax of September 23, 1993, you were unaware of RTC criminal referrals relating to Madison?
A Yes.
Q And again -- strike that.
Did you send the analysis which is attached to the Patten fax to anyone?
A I may have faxed it, yeah.
Q Do you recall who you might have faxed it to?
A Yeah, there may be a fax number in the

65

upper right-hand corner of JML 2432.
Q Yeah, I can't really read that very closely. It appears to be 202-456, I think, and then some numbers.
A Yeah. Well, my copy says 202-456-6703.
Q And whose fax number is that, to the best of your knowledge?
A I don't know, but it may be -- it may be Bruce Lindsey's.
Q Is that your belief?
A The White House prefix -- no, I don't I don't know. I could check.
Q Do you have any recollection of ever speaking to Mr. Lindsey about the analysis which is attached to the Patten fax dated September 23, 1993?
A No, but I may very well have.
Q Do you recall any discussions with anyone about the Patten fax of 9/23/93 including its attachment?
A I talked to Mr. Patten about it but I don't have any specific recollection, no.
Q If you could turn -- again, this is a

66

difficult telephonic problem but let's see if we can do it. There are some documents which bear Bates number I believe 2592 and 2593. There is some notes.
A I got it. Yes, I have them.
Q These documents were produced, I believe, in an October 2nd cover letter that you sent to the Committee?
A All right. I'll accept that representation.
Q Do you recall how you located these additional documents?
A Not specifically, no.
Q Do you have any recollection as to why they weren't included in the initial production that you sent to the Committee on September 27th, 1995?
A That was just overlooked.
Q Okay. And you are now in the process of ascertaining whether there are any other documents that might be responsive to the Committee's subpoena?
A Yes, I want to respond to this letter that I received.

67

Q If you could start at the top of the page bearing Bates number 2592 and just try to reconstruct your handwriting for us, what your notes say.
A Yes. It has a date of October 5th, of 10/5/93. In the margin is written "(Blair)" and then says "Sam Heuer (Ishkoff)."
Q And at top it says "WDC." That's Whitewater Development Corporation?
A Yes.
Q Are you someone who takes notes on a frequent basis?
A No. I can't say it is frequent.
Q Okay. Mr. Heuer was --
A Heuer.
Q He was Mr. McDougal's attorney; correct?
A Right.
Q What does the notation "(Ishkoff)" refer to?
A I believe this is the reference to a call that Heuer got from Ishkoff, who is a reporter at The Washington Post, that Heuer was in turn relaying to Blair.

68

Q Just read through your notes for us.
A It says "International Paper, McDougal, put in certain co," which I think means company, "and WDC by mistake."
Q We missed after you said "company." The --
A "Put in WDC by mistake," and there is arrow which in my note would mean transfer or move to, "Great Southern Land Company."
Q What does this indicate to you, this notation?
A Well, as best as I can recollect, there was acquisition reported by the press of some property owned by International Paper Company McDougal, as I remember, sometime in 1986 put into Whitewater Development Corporation for a period of time and then transferred out before year end to Great Southern Land Company, which was another company that he controlled.
Q Do you have any knowledge as to whether the Clintons were aware of this transaction?
A The Clintons were not aware of this transaction.

69

Q To the best of your recollection, why was the press interested in learning more about this transaction?
A Well, as I remember, they had done some research on their own and a record search in Pulaski County had uncovered Whitewater Development Corporation involved in real estate transaction with International Paper Company sometime, as I remember, in the fall of 1986.
Q Okay. We missed the last sentence.
A The press wanted to know about it.
Q Let's go to the next notation. What does that refer to?
A It says "Jack Files."
Q "Jack Files"?
A Yeah.
Q Who is Jack?
A Let me read it all and then I'll try to explain it to you as best as I can recall. It says "Jack Files -- during trial -- GSL files -- Great Southern Land not make payments foreclosed, purchased Phoenix Mortgage, Grand Lassiter -- principal."

70

Q Okay. What does that refer to?
A As best as I recollect Jack Files was somehow an associate of McDougal's who during the time that Mr. McDougal was involved in a criminal defense trial which, as I remember, was sometime in the fall of 1986, had been asked to look after Mr. McDougal's affairs and the Great Southern Land Company files. Great Southern Land did not make the payments to International Paper, who foreclosed, and the property was apparently purchased by Phoenix Mortgage at the foreclosure. There was some notation that Lassiter, and I believe that to be a reference to Dan Lassiter, was a principal.
Q And who is Dan Lassiter?
A Well, I never met him. He is and was a principal in an investment brokerage company, as I remember, in Little Rock or an investment banker of some kind.
Q Have you ever discussed Dan Lassiter with President Clinton?
A No.
Q Have you ever discussed Dan Lassiter with

71

Mrs. Clinton?
A No.
Q Have you ever discussed Dan Lassiter with Bruce Lindsey?
A Probably.
Q And what do you recall about any discussions you might have had about Dan Lassiter with Bruce Lindsey?
A I don't recall any discussions with him specifically.
Q Do you recall any discussions about Dan Lassiter during the 1992 campaign?
A No, I don't recall any such discussions.
Q Okay. Why don't you read the next notation.
A It's "MB exclamation, nota bene. Clinton is not involved in above." Goes on to say "why McDougal purchased WDC," question mark, "tiny cash flow, NOL, no value to McDougal."
Q What does that refer to?
A Well, as best as I can remember, the question was whether McDougal had used WDC to make

72

this purchase of basically unrelated property in Pulaski County against the expectation that he could turn it for a profit and shelter the profit by having used the net operating loss of Whitewater Development Corporation.
Q Okay. What is the next notation?
A Says "Foster see that WDC tax returns were prepared."
Q And what does that refer to?
A That was the fact that Vince had undertaken to see that the tax returns for Whitewater Development Corporation were being prepared and filed as part of the Clintons' disposition of their interest in Whitewater.
Q And just so that the record -- we haven't got this from you. When was he involved in trying to put together the Whitewater Development Corporation tax return?
A I think all he did was provide the material, including my report, to the Clintons' accountant, a woman named Redden. I think she prepared the returns which were then delivered to

73

McDougal to be reviewed and filed.
Q Do you recall when Mr. Foster would have provided this advice to Ms. Redden?
A Well, I don't think he gave her any advice. I think he gave her information and said here. I don't even know that. I know he had asked her to prepare tax returns for Whitewater Development Corporation which could be filed in connection with the Clintons' selling and disposing of their interest.
Q Do you recall if he would have spoken to Ms. Redden -- would this have happened in 1993 or 1992?
A I think in '93.
Q Were you aware that Mr. Foster had a role with regard to preparation of Whitewater's tax returns in 1993?
A As I said, I don't think he had a role in the preparation of the return other than seeing that it was done by the accountant. I think she did all the work.
Q Do you know whether Mr. Foster reviewed the

74

work?
A I don't.
Q Have you ever had any discussions with President Clinton about the fact that Mr. Foster was involved in matters relating to Whitewater Development Corporation during the time he was deputy counsel to the President?
A No.
Q Excuse me?
A No.
Q Have you ever had discussions with Mrs. Clinton about the fact that Mr. Foster had involvement with regard to Whitewater Development Corporation during the period when he was deputy counsel to the President?
A No.
Q Have you ever discussed with Mr. Nussbaum the fact that Mr. Foster had involvement with Whitewater Development Corporation --
A Let me finish my answer.
Q Excuse me?
A I have not finished my answer.

75

Q Oh, I'm sorry.
A He -- the only involvement that I know that Foster had with Whitewater in 1993 was seeing that the tax returns were prepared by their private accountant. No, I did not discuss that with either the President or Mrs. Clinton.
Q Did you discuss it with Mr. Nussbaum?
A No.
Q Mr. Lindsey?
A I may have had discussions with Bruce Lindsey in the context of what the status of this was, but beyond that, I don't think I would have had any discussions with him.
Q Have you ever discussed Whitewater Development Corporation with Margaret Williams?
A No.
Q Do you know Margaret Williams?
A No.
Q Okay. Did you speak with Margaret Williams on any kind of regular basis?
A No.
Q Wasn't Mr. Foster also involved in trying

76

to ascertain how the First Family's investment in Whitewater Development -- strike that.
Wasn't Mr. Foster also involved in -- strike that.
Did you have any understanding as to whether Mr. Foster had any role in connection with tax treatment of Whitewater Development Corporation on the First Family's personal income tax return?
A I believe he did.
Q And that would have been an income tax return filed in 1993; right?
A I believe it would have been.
Q So his involvement would have been both with regard to the corporate tax return of Whitewater Development Corporation and also the Clintons' personal tax return; right?
A That isn't what I said, Counsel. Let me back up. What I said was his involvement with respect to Whitewater's tax return was to deliver material, as I understood it, to the Clintons' personal accountant so that she could prepare the returns and they could be filed. I understood,

77

beginning back in 1992 after the election, that Mr. Foster was involved in the financial affairs of the Clintons in connection with the creation of a blind trust, the disposition of Whitewater and ultimately the filing of the Clintons' personal tax returns.

Q Did you ever discuss with Mr. Foster -- strike that.

Did there come a time in 1993 when the Clintons sold their interest in Whitewater Development Corporation?

A I don't remember if it was late 1992 or in 1993, but there did come a time when, yes, they sold their interest.

Q More likely late 1992?

A I just don't remember.

Q Okay. Do you recall who they sold their interest to?

A They sold it back to Jim McDougal.

Q And how much did Mr. McDougal pay for their interest in Whitewater Development Corporation?

A I think it was a nominal amount.

78

Q $1000?

A Sounds right.

Q Now, do you recall any loans that were outstanding with regard to Whitewater Development Corporation in 1992?

A Loans outstanding to Whitewater?

Q Owed by Whitewater Development Corporation.

A Well, the mortgage, the initial mortgage, taken for some $180,000 I don't believe was paid in full until late 1992.

Q Did you have any involvement in the process by which that mortgage was paid in full?

A No.

Q Did you have any discussions with anyone about the process by which that mortgage was paid in full?

A I talked to Jim Blair about it. No specific recollection.

Q Do you know whether Mr. Wade had any role in terms of -- involvement in terms of paying that mortgage off?

79

A I don't know. I would expect he probably did, but I don't know specifically what his role would have been.
Q Have you ever met Mr. Wade?
A Not to the best of my knowledge.
Q Okay. Why do you think Mr. Wade would have had a role in terms of paying off this mortgage?
A I seem to recall that he was sort of in charge of seeing that the purchase contracts for the lots were administered and that the payments as they were still trickling in were being delivered to the bank.
Q During the conversation you had with Mr. Blair on October 5, '93, do you know why Vince Foster's name came up?
A I don't know.
Q Do you know whether Mr. Heuer was aware of Mr. Foster's involvement in Whitewater?
A I don't know.
Q Do you know whether Mr. Foster ever discussed Whitewater with Mr. Heuer?
A I don't know.

80

Q Okay. What is the next entry?
A It says "Susan in town, McDougal's mother death. Living in Michigan?" That was a reference to Susan McDougal.
Q And what about "in town"?
A "In town" would have been, I assume, a reference to Arkansas. My recollection was that after she and Jim McDougal divorced she left Arkansas.
Q Okay. What is the next entry?
A "RTC investigating. Possible target indicted for everything government could think of."
Q Who is the possible target?
A McDougal and.
Q And what does "indicted for everything that government could think of" refer to?
A You would have to ask Mr. Heuer. I would assume that that was some part of his conversation with Ishkoff that he reported to Blair.
Q All right. So the conversation goes from Ishkoff and Heuer and then Heuer reports it to Blair and then Blair reports it to you?

81

A Yeah.
Q Okay. Let's turn to the next page.
A All right.
Q Okay. If you could read the next entry.
A It says "RTC criminal referrals, last two months, KC," which I understand to be a reference to the Kansas City, "transferred to DOJ," Department of Justice.
Q Okay what does that refer to?
A Well, again, I believe this is in context of my -- in the context of my conversation with either Blair or with Loretta.
Q Was Loretta on the conference call?
A No, it wasn't a conference call. As I told you before, I spoke to each of them, I believe --
Q Separately?
A The 4th and the 5th and I don't recall speaking to them together.
Q Okay. And what does the next notation refer to?
A It says "Madison money, Clinton fund-raiser, spring 1985."

82

Q And what does that refer to?
A I don't really remember. I think it is a reference to what may have been involved in the criminal referrals, but I don't know.
Q What does the next entry refer to?
A The next entry refers to either a conversation I had with John Tisdale or he had with me. Tisdale is a lawyer in Little Rock with the Wright, Lindsey & Jennings firm and this was regards -- with regard to -- that's his phone number, I think, 501-376-0108.
Q Let me ask you a question about Mr. Tisdale, he is now counsel to President and Mrs. Clinton?
A John was helping us obtain records, as the notes indicate, when we needed them. He was in Little Rock.
Q Was he counsel to President and Mrs. Clinton back during the campaign?
A I don't know.
Q Okay. Do you know when he became counsel to the Clintons?

83

A I don't know.
Q Do you know if he is the counsel to the Clintons?
A I don't know that either.
Q Okay. Did you work with him during the 1990 campaign in any matter having to do with Whitewater?
A I don't believe I did. He may have had some very minor role in gathering documents, but I don't have any specific recollection. I did ask him here, as these notes indicate, to check the Pulaski County records to see what we could find out about Master Marketing or Madison Marketing.
Q When was the first you learned of Master Marketing?
A I don't remember.
Q Do you remember if it was during the campaign?
A It may well have been, I just don't remember.
Q Okay. Did you ever discuss with President Clinton the 1985 fund-raiser that Mr. McDougal

84

organized for the Clinton gubernatorial campaign?
A No, I don't think I have.
Q Did you ever discuss that fund-raiser with Mrs. Clinton?
A No, I don't think so.
Q Did you ever discuss that fund-raiser with Mr. Lindsey?
A Probably.
Q What do you recall about any discussions you might have had with Mr. Lindsey?
A I don't recall any specific discussions with him, but I'm sure it came up in the context of these criminal referrals during October if, in fact, I had been informed that this was part of the subject matter of the referral.
Q Now, in the left-hand margin there are some dates. What does that refer to?
A I believe those are dates for which I asked Tisdale to search the Pulaski County records to see if the Whitewater Development Corporation appeared in any regard or connection.
Q Do you have any recollection as to the

85

context in which Master Marketing would have come up?
A No, I really don't.
Q Do you have any understanding or knowledge of a loan made by Capital Management Services, Inc. in the amount of $300,000 to Master Marketing?
A No. Included in what I read in the press.
Q Have you ever discussed that $300,000 loan with anyone?
A I probably discussed it with Lindsey the first time, what it was and what the allegations were.
Q Do you recall when you might have discussed it with Mr. Lindsey?
A I may have discussed it with Mr. Lindsey after it was reported in the press.
Q When you say "reported in the press," do you mean when there has been an actual news story in the newspaper?
A Not exclusively. Sometimes I recall having discussions with Lindsey after, you know after one of us would get a call from a reporter about a particular matter and before a story was written.

86

Q Okay. Just wanted to clarify that for the record.
A I appreciate that. It is not necessarily -- I don't mean necessarily by that that there was a specific press story that appeared on a specific date.
Q Yeah, because with, you know, with modern computers people -- you sort of a handle as to when the stories occurred and I wouldn't want you to be in a situation of saying that it was in the press and then the stories are later than -- later than these conversations.
Now, the next entry is what?
A Is "Blair/Heuer" question mark "WDC tax returns" question mark.
Q What does that refer to?
A That refers to a reference to whether, in fact, the WDC tax returns have been filed as of this date. Blair, I believe, is responsible for getting them to Heuer so that they could be reviewed by McDougal and ultimately filed by McDougal. He had the responsibility for that. I assume that's what

87

that references.
Q What the next reference?
A It says "Mike Berman transition tax issues."
Q What does that refer to, sir?
A I have no idea.
Q Have you ever discussed Whitewater Development Corporation with Mike Berman?
A I think I may have.
Q Who is Mike Berman?
A He is a lawyer, I think, but I have no specific recollection of that.
Q Why do you think you may have spoken to Mr. Berman about Whitewater Development Corporation?
A Excuse me?
Q Why do you think you may have spoken to Mr. Berman about Whitewater Development Corporation?
A A recollection that I may have, that's all.
Q Do you have any basis for thinking you may have spoken to Mr. Berman as opposed to, you know, any of the other 50,000 lawyers in Washington, D.C.?
A No. I don't remember.

88

Q Was he someone who had a role in legal issues relating to President and Mrs. Clinton's taxes during the campaign or during the transition?
A I don't remember. He may have.
Q Do you know whether Mr. Berman would have attended any meetings at which the President and Mrs. Clinton's taxes would have been discussed during the transition?
A I don't know.
Q Okay. Was he -- do you remember -- do you recall whether Mr. Berman had a role during the transition?
A He may have, I don't remember if he did.
Q Okay. Next entry?
A Okay. "McDougal interviewed ABC, Clintons not involved. BC not balance checkbook." Then it says "Charlie James subpoenaed."
Q What does this refer to?
A I think it refers to a conversation that I had with Blair and he was telling me that Mr. McDougal had been interviewed by ABC in which he had stated that the Clintons were not involved in

this event -- events. That BC is the reference to Bill Clinton couldn't balance a checkbook.
Q Something McDougal said?
A I'm sorry?
Q Is that something that McDougal said or something that Mr. Blair said?
A No, that would have been something McDougal said.
Q And the next entry?
A Just an indication that Charlie James had been subpoenaed.
Q And who is Charlie James?
A My recollection is that he was an accountant early on in the Whitewater Development Corporation's life that had been responsible for the preparation of tax returns, corporate books and records and that sort of thing.
Q Do you know whether he was Whitewater president at one time?
A He may have been. I don't know.
Q One thing about the notes that you have on pages JML 2592 and 93, these notes encapsulate

several conversations that you had; is that correct?
A I think so.
Q So that the conversations would have started off with a Blair conversation and then gone to a Tisdale conversation and then back to a Blair conversation?
A Yeah, we may have had more than one conversation on the same day.
Q Do you know how Mr. Blair would have known that Mr. James had been subpoenaed?
A No, I don't know.
Q Let me take you through some more documents. These are documents bearing the Bates numbers JML 2493 and -- excuse me, 2593 and 2594. Is that the same --
MR. HADDON: It is 2593.
MR. GIUFFRA: It is the same document.
MR. HADDON: Yeah, there may be duplicates in there. I apologize for that.
MR. GIUFFRA: No, actually, these look different.
MR. COLE: I have 2594 and 2595 here.

91

MR. GIUFFRA: Yeah, let's try that.
I think I may have the wrong page number, 2594, 2595.
THE WITNESS: All right. Which one do you want me to look at?
BY MR. GIUFFRA:
Q It seems as if they were maybe not Bates stamped in proper order. Is that possible? Is 2594 it says page 2 at the top in the left-hand corner --
A Yeah.
Q -- and then there is -- my page -- the copy that I have is a bad copy and it looks like 2595 is the first page; is that correct?
A That's correct.
Q Okay. Why don't you take us through these notes?
A 2595 --
Q Can't hear you.
A I wasn't saying anything -- says "M. Ishkoff, Washington Post, 202-334-7307." That's a reference, I think, to the Mike Ishkoff of The Washington Post who was calling me about this

92

International Paper Company transaction.
Q And this call would have been on 10/5 -- it looks like 1986. That can't be right.
A No, 10/5/1986 is when the transaction occurred. The call would have occurred sometime in early October and it is not dated, but I do recall talking to Ishkoff about this time which would have been around 4th or 5th of October of 1993.
Q Before or after your conversations with Blair?
A I believe after.
Q Okay. Why don't you take us through the notes?
A Okay. The heading there is "International Paper Company-Pulaski County." He is giving me the details as he has them of this transaction which according to him, took place on October 5th, 1986. Whitewater Development Corporation purchased for $550,000, 110 acres from International Paper and gave them an 80 percent mortgage for $440,000. And also there was a $30,000 two-month loan it says, and it is signed by McDougal. And then it shows, it seems to

93

me, that it was then transferred to Great Southern Land Company in '86 and then says "MTG assumed," meaning mortgage assumed, question mark.

Now, I don't know if that was his question or mine, frankly. And it says "a source at the RTC told records exist funds from Master Marketing to Whitewater. Federal investigation, FBI search warrant."

Q We didn't hear that.

A "WH aware -- what? V. Foster working on WDC tax returns" --

Q I think we are going a little too quickly here.

A All right. Where do you want me to go back to?

Q "Source at the RTC"?

A Yes. That's what it says.

Q Ishkoff told you that a source at RTC had told him that records existed indicating that funds went from Master Marketing to Whitewater?

A I believe that is what it means.

Q Is there any connection between this

94

Ishkoff phone call and the document that Les Patten prepared on 9/23/93?

A I don't think there is any direct connection, no.

Q Okay.

A These questions are largely driven by this International Paper Company transaction which was uncovered in the fall of 1986 and did not appear, by the way, on the books and records of Whitewater Development Corporation.

Q Okay. Now, the next entry, I can't read that one again. It says "investigation" of some sort?

A "Federal investigation."

Q Okay. Federal investigation. This is Ishkoff telling what the source is telling him?

A I believe so. Yeah. It was a federal investigation of Susan or involving a FBI search warrant with Susan.

Q And the next entry?

A "WH aware" and it says "what" and I don't know what that means.

95

Q Who is WH?
A Assume that is a reference to the White House. I think he was asking me what the White House was aware of, but I don't -- I just don't remember for sure if that is what that means.
Q It says "White House aware" and you have "what"?
A Yeah.
Q What do you mean, the White House is aware of this investigation or the White House is aware of the Whitewater situation?
A They obviously were aware of the Whitewater situation. I don't know what the note means. I don't remember what the note means.
Q Sitting here today what does it indicate to you?
A It doesn't mean anything to me. I don't know what it means.
Q What is the next entry?
A "Foster working on WDC tax returns (suicide) prep privately."
Q What does that refer to?

96

A I don't know.
Q Okay. Your next entry?
A "Foster conversations days prior, Park Service interview -- purpose 'social and business.' WDC" question mark, "no."
Q What does this indicate to you?
A He asked me about conversations that had been reported that I had had with Vince Foster in the days before his suicide. He quoted to me from an interview I had given the Park Service Police where I had told the Park Service Police, in what I thought was a confidential interview, of those phone calls, both social and business. He asked did the business include Whitewater and I told him the answer was no. Obviously someone at the Park Service had leaked that report to The Washington Post.
Q Next entry?
A It says "Blair WDC tax returns" question mark "prep" meaning, I think, prepared, question mark "filed" question mark. I believe this relates to a conversation I may have had with Jim Blair asking him those questions.

97

Q Is this a separate conversation or is this you talking to Ishkoff still?
A No, I don't think I was talking to Ishkoff.
Q Where do you think the Ishkoff part of this ends, right above Blair?
A It is possible he may have -- Ishkoff may have talked to Blair too. I don't remember.
Q Okay. The next page.
A "Brant from the Rose Firm called before me on Tuesday 7/20." I think it was Ishkoff telling me that Brant -- who isn't Brant, by the way, that was someone whose name I did not then recognize -- it is from the Rose Law Firm, had called Foster before I did on Tuesday July 20th, which, I think, in fact the record now show.
Q Okay. What is the next entry?
A "J. Gerth called Loretta" that is Loretta Lynch "10/4 a.m. asking questions, as I understand it, about the airplane transaction which occurred in the fall of" -- I'm sorry. "In the spring of 1985. Charlie James, WDC accountant on Madison Guaranty all bank exam reports pending investigation."

98

Q What does that indicate to you?
A Well, I can't be certain but I believe what it means is that Gerth had called Loretta on October 4th to discuss these subjects or to ask these questions and inform her, I think, that somehow some way he had obtained copies of all the bank examination reports from Madison Guaranty.
Q Ms. Lynch, do you know what law firm she works at in San Francisco now?
A No, I don't.
Q She went to the Yale Law School, class '87?
A I don't know the class, but she went to Yale law school.
Q I think she was in my class in law school if it's the same Loretta Lynch.
A "Charlie James subpoenaed for grand jury. McDougal, Smith, Tucker" -- McDougal with a line through it "WDC."
Q And what does the dash mean to you above Charlie James?
A Oh, it means change in subject.
Q Is this a different person you are speaking

to? What change in subject?
A The subject. It doesn't necessarily mean I'm talking to somebody else.
Q Who do you think you are talking to throughout this conversation? Do you think this was all Ishkoff?
A I don't know. Could be. It could also be a conversation that I had with Blair.
Q Is it possible this could be also a conversation you had with Mr. Lindsey?
A I don't think so, but it is possible. I did talk to him during this period of time.
Q Okay. Let me show you -- ask you to look at another document. This is called JML 140.
A Yes.
Q I just have a quick question in terms of your Bates numbering system. These most recent documents go up to 2595. Did we receive 2595 pages worth of documents?
A I don't know if you did. I don't know that you did or that you didn't. These are documents that I have provided for the last two years to the

Department of Justice, twice to the Office of Independent Counsel, once to the House and once to the Senate.
Q Why would we not have received all the documents in the complete sequencing up to 2595?
A Because I have already provided -- let me say it again. I provided documents as early as February of 1994 to the Department of Justice. Those were Bates stamped and delivered to them. Then I got requests from the Office of Independent Counsel, first Mr. Fiske and then Mr. Starr, and then I had several requests from them and we Bates stamped and responded to those. Then I got requests for documents from Senate and also from the House -- I don't remember if that was the sequence -- and we had tried to keep all of that Bates stamped and straight so we know what has been produced.
Q What I'm trying to figure out is whether there are documents you haven't provided to us that may relate to Whitewater Development Corporation that are in your possession, custody or control or that you may have provided to some other entity.

101

A As I told you before, I will review again in response to this subpoena that I received to see if there are any such documents. I already told you that there are documents that I gave to Kendall which I know that he has provided to you.
Q We have been operating under the procedure that if a producing party has the documents, if another producing party also has the same documents both producing parties should produce the documents.
A I don't have anything that -- you are first one to tell me that. With that in mind, I will go back through my documents.
Q Okay. Let's talk about this April 10th, 1992 letter. Do you recall drafting this letter?
A I wrote it, sure.
Q Did you send the letter?
A Yes.
Q Okay. Could you please just describe for the record the circumstances under which you prepared this letter?
A Set forth in the letter itself.
Q What do you recall about the preparation of

102

this letter?
A That I wrote it and sent it to the Clintons.
Q Do you recall anything further about this letter?
A Other than what it says, no.
Q Have you ever discussed this letter with Mr. Lindsey?
A I don't remember.
Q Have you ever discussed this letter with Mr. Kendall?
A May have.
Q Have you ever discussed this letter with Mr. -- strike that.
What do you recall about any conversations you would have had with Mr. Kendall about this letter?
A Privileged and I respectfully decline to answer.
Q Have you ever discussed this letter with Mr. Foster?
A Not that I recall.

103

Q Do you know whether Mr. Foster had a copy of this letter?
A No.
Q Okay. Let's just go through the letter. I have a couple of questions about it. Did you prepare two reports during the 1992 -- strike that.
Did Pat McCartney prepare two reports concerning the Whitewater Development Corporation during the 1992 campaign?
A No, they prepared a single report and a summary of it. The work product was a single work product.
Q Okay. And am I correct that the summary of the report was what was provided to the press?
A Yes, I believe that to be the case.
Q Now, there is something that you describe in this letter called a complete report. What is the complete report as opposed to the summary report?
A Well, I mean I don't know how to answer that. The summary was the summary.
Q But how long was the summary --
A I don't remember.

104

Q -- in terms of pages?
A I don't remember. It's been produced to you. You can count the pages.
Q Could you show us in your -- could you -- could you examine the production of documents you made to the Banking Committee and identify the summary of this Patten/McCartney report by Bates numbering in your production?
A You have copies of the summary and the complete report is --
Q We can't hear you.
A For example, the summary can be found at JML 0079 through JML 0083.
Q So for pages 79 through 83?
A That's five pages.
Q Five pages. Excuse me. And that was what was made available to the press?
A Correct.
Q Okay. And the longer report is found at what pages?
A Page JML 084 and continues through JML 093.
Q Okay. Okay. Now, were both of these --

105

strike that.
What is the document bearing Bates numbers JML 31 through 67?
A I'm sorry, what?
Q 31 through 67.
A 31 --
Q Through 67.
A Appear to be copies of the report and copies of the copies of work papers.
Q Okay. Which of these documents would have been attached to the letter dated April 10, 1992?
A The document beginning at JML 0084.
Q And continuing through 93?
A Yes.
Q Okay. Did you ever give a copy of any of these documents to Mr. Foster?
A I believe I did, yes.
Q Do you recall which version of the so-called Patten/McCartney report you would have given to him?
A Probably all of it. I'm certain all of it.
Q So there are three different versions --

106

should we call it the Lyons report? I guess most people call it the Lyons report.
A No, Counselor, there is only one. There is a summary of the report. Both the summary and the complete report as it is referred to in JML 140, I believe I provided to Vince Foster sometime in 1993, maybe earlier.
Q Do you know why you provided it to Mr. Foster, at his request?
A I believe so.
Q Did you have any understanding as to why Mr. Foster was requesting these reports?
A Yes, he was interested in seeing that the tax returns for the Whitewater Development Corporation could be properly prepared and filed.
Q Did Mr. Foster ever report to you on any communications that he had with Mrs. Clinton about Whitewater Development Corporation?
A I'm sure he did.
Q Do you recall anything about those conversations?
A Well, I don't have any specific

107

recollection, but I do recall we had general discussions about the sale of their interest in the company, preparation and filing of the company's tax returns since, obviously, McDougal was in no position to do it. And I'm sure, as I told you earlier, we had some discussions about how the Clintons ought to treat their sale of Whitewater on their own personal tax returns.

Q This would have been communications from Mrs. Clinton to Foster that Foster was relaying to you?

A No, these were communications I had with Foster and I -- at some point during that he probably told me about his discussions or his communications with Mrs. Clinton about them. I don't have any specific recollection.

Q Now, the document bearing Bates number JML 30 through 67, what exactly is this document?

A I just told you that.

Q I mean, this document is 37 pages long and the document which is the summary report is five pages long and then there is another document which

108

is nine pages long?

A You mischaracterized. The first document beginning at 031 is it not a single document. It is a series of documents, as I told you. It is, first of all a copy of the report which I wrote followed by a number of pages of worksheets and work papers.

Q We've lost you. We've lost you.

A What is your question?

Q Okay. I asked you what these three documents were and now you are telling me that they are not separate documents.

A I'm saying that you are mischaracterizing documents JML 031 through JML 067. Go back and look at the documents as so marked. You will see JML 031 through JML 033 is a letter to Governor and Mrs. Clinton from Mr. Patten. It attaches to it a number of exhibits which are identified. Beyond which are a number of pages of worksheets which are, in my view, nothing more than worksheets. I haven't gone through each and every one of them. I believe that is what they are.

I was also told we weren't going into this

area today so I've not spent any time yet going through these documents with any great care or attention to detail. I want you to understand that.

Q I appreciate that. Maybe the best thing to do is not to -- I'm just trying to get an overview of what the documents are.

A That's fair and I'm just trying to help.

Q Okay. Do you recall any discussions during the 1992 campaign as to -- strike that.

Why was only a summary of the Patten/McCartney report provided to the press?

A I don't know. You would have to ask someone other than me.

Q Do you know who made the decision as to which version of the Patten/McCartney report would be provided to the press?

A I don't.

Q Did you ever discuss with anyone -- strike that.

During the campaign -- strike that.

MR. GIUFFRA: Could we take a break. We need to change the tape.

THE WITNESS: Have you some idea about how much longer you're going to be?

MR. COLE: We will go off the record for a second.

MR. GIUFFRA: Let's go off the record for a second.

(Discussion off the record.)

BY MR. GIUFFRA:

Q Mr. Lyons. Hello. Hello. Mr. Lyons.

A Hello.

MR. COLE: You lost them.

(Discussion off the record.)

MR. COLE: Let's go back on the record.

MR. GIUFFRA: Let's go back on the record.

BY MR. GIUFFRA:

Q Just to try to understand this one last time. The actual typed portion of the summary, was that drafted by you or by Mr. Patten?

A Well, what document are you referring to.

Q This is 79 through 81.

A Just a minute.

Q Oh, sorry.

111

A JML-079 through 081?
Q Yes?
A Drafted by Mr. Patten and Mr. Weeks.
Q Okay. So this is the summary. The documents bearing Bates number 84 through 93 all right the -- strike that.
The pages 84 through 90 that's also typewritten, okay. That was also prepared by Mr. Patten and Mr. Weeks?
A Yes.
Q Okay. Did you review drafts of these particular documents?
A I believe I did, yeah.
Q Okay. Do you recall who would have instructed Patten, McCartney to prepare a summary in any longer form?
A Who instructed them to prepare a summary?
Q A summary of their analysis and then a longer version of their analysis?
A I believe I would have done that.
Q Do you recall why you would have asked them to prepare two versions?

112

A Well, it isn't two versions. It is the same work product. The conclusions, if you compare them, are identical. One is simply shorter and in my opinion was more responsive to the issues that were then being put forward by the press. It was simply easier to understand to put it out in a summary version and we did.
Q Okay. And the document bearing Bates numbers 31 -- strike that -- 30 through 67, that's the summary report plus additional work product?
A You mean -- you don't mean 30, you mean 31?
Q Well, there's a cover letter with 30, but yeah, 31 through 67?
A That is --
Q Summary plus additional work, work papers?
A Work papers are supporting schedules, yeah, however you want to characterize it.
Q I think we understand now. Okay. I have a question. Was Patten, McCartney paid by the Clinton campaign for their work in connection with this report?

113

A Yes, they were.
Q Were you paid for your work?
A No, I was not, okay.
Q In your letter of April 10, second full paragraph, you identify certain items that are not discussed in the summary report; correct?
A Financial effect of those items are in the summary report but there is not an independent or separate detailed discussion, that's correct.
Q Now, one of the items that is identified in your letter of April 10, is lot 13 and borrowings associated with it. What is lot 13 and borrowings associated with it?
A As set forth on paragraph 5 page 5.
Q What is your understanding of lot 13?
A Well, it was a lot that Whitewater Development Corporation which was used at various period of time, but housed a show home and may have also housed a sales office on the site.
Q Okay. What is a $9000 interest deduction taken by you in 1980?
A There was an interest deduction as set

114

forth on paragraph 4, page 5 of the report in 1980 which as I recall, let me just take a look and make sure, look at JML 088.
Q Okay. So this refers to the matters discussed if paragraph 4, page 5?
A Yes.
Q Okay. Had you discussed the matters set forth at paragraph 4, page 5 or paragraph 5, page 5 with the Clintons during the campaign?
A We discussed it certainly with Mrs. Clinton as is indicated.
Q Okay. And why did you recommend that the complete report be maintained in the strictest confidence?
A Because it was an attorney-client document. We had not concluded what, if any, action would be appropriate for the Clintons to take against from Mr. McDougal or others who may have been involved in what appeared to me to be mismanagement of this corporation.
Q Do you recall any discussion with either Clinton with regard to releasing the complete report

115

to the press?
A No, I don't have any specific recollection.
Q How about a general recollection?
A No, I don't have a general recollection. I can't say that it didn't happen. I just don't have a recollection.
Q I call your attention to the document bearing the Bates 2584 and 2585.
A Again, please. 2584.
Q And 85.
A Yes. I have it.
Q When did you first learn of information indicating that the Clintons had overstated their investment in Whitewater by over $20,000?
A Let me clarify something with you. My report initially issued in March of 1992 financial sense was intended to as best as we could quantify the amount of money that the Clintons had put into Whitewater and try and see if we could determine what happened to it. The result that we reached then was in the $60,000 range as I recall.
I wouldn't want to characterize it

116

necessarily as an investment in a technical sense because I'm not sure that frankly it was all that -- the company as it was operated was all that significant in terms of its characterization of moneys such as the investment as distinguished from loans or advances why among other reasons I think we choose that more general term to describe it.
So with that sort of a background, I learned from the President through Mr. Kendall in the days preceding this document that the President had some additional recollections that had occurred for which we had a check, for which we had assumed or we believed was related to Whitewater.
In reviewing the legalese of his mother's books after her death, the President recollected that this check may have had some relationship to the purchase of a home that he and his mother had acquired on a lake in Arkansas back in the early '80s. That caused, I believe, Mr. Kendall to do some further investigation along with us, in fact, concluded that was the case. I then wrote this letter.

117

Q We can't hear you.
A I then wrote this letter supplementing and modify the earlier report which I had written. This was released to the public immediately thereafter.
Q Okay. During September 1993, did you attempt to contact Webster Hubbell?
A I may have, I may very well have.
Q Do you have any recollection about what you were contacting Mr. Hubbell about?
A No, I really don't. There were a number of occasions on which we would talk or if I was in Washington we might get together.
Q During September 1993, did you ever discuss anything having to do with either Madison or Whitewater with Mr. Hubbell?
A I don't believe so.
Q We can't hear you. Go ahead.
A He may have asked or I may have volunteered that it was, you know, an ongoing item of interest to the press. We were trying to deal with questions as they came to us, but I don't have any recollection beyond that.

118

Q Did you ever discuss Mr. Hubbell RTC criminal referrals related to Madison?
A What.
Q Did you ever discuss with Mr. Hubbell the RTC criminal referrals relating to Madison?
A I don't know. I don't have any specific recollection of that. I see no reason that I suppose that I would have. He recused himself from anything dealing with Whitewater in any way.
Q When was it your understanding that he recused himself from anything having to do with Whitewater?
A I don't remember exactly. I seem to recall he wrote a letter or there is some sort of a document that would provide that date.
Q Have you ever discussed with Mr. Hubbell his recusal from the Whitewater Development Corporation?
A No.
Q Matters the involving the Whitewater Development Corporation?
A No, I don't think so.

119

Q What's the basis of your knowledge of a letter in which Mr. Hubbell indicating that he would be the recusing himself from matters relating to Whitewater Development Corporation?
A I thought I saw him testify to that.
MR. COLE: We have now come full circle where the testimony in our hearing is now the subject of the testimony in our depositions. It could go on forever.
(Laughter.)
THE WITNESS: So it seems.
MR. HADDON: The circle becomes a spiral.
BY MR. GIUFFRA:
Q Okay. I'm going to read to you, unfortunately, because you are not here. I can't show you the slip. We have a message slip from you dated 10/25/93. The message is "will be in town tomorrow. Would like to see you," I believe, meaning Mr. Hubbell and others, "on Wednesday or Thursday to discuss/review documents on WDC company."
Do you have any recollection of leaving that message with Judge Hubbell's secretary?

120

A I remember calling him and I remember the message slip if it's the one that was printed in The Wall Street.
Q This is the second message slip. This is an earlier message slip dated 10/25/93.
MR. COLE: What is the second one just so that he has the context?
BY MR. GIUFFRA:
Q The second one the message is two days later, is meeting with Bruce Lindsey. "If you need to reach him, suggest you take documents he needs to look at with you tomorrow when you meet Jack Quinn for lunch."
A Okay. I have it in mind.
Q Okay. What are these messages in reference to?
A I think they are self-explanatory.
Q Well, could you provide a little bit more to us than "they are self-explanatory" because they are not self-explanatory. Why were you calling Mr. Hubbell about Whitewater Development Corporation on October 10, 1993 -- excuse me, October 25, 1993?

121

A I was to be in town, first of all, and I was going to see him or take him to lunch. We had some discussion about Whitewater documents that may have been in the custody or in the possession of other people in the campaign. We were trying to get all campaign documents organized, warehoused and ultimately put into a depository as they are now in Little Rock. And I believe it was in that context I was trying to determine what documents, if any, he may have had, either having assembled them himself or having obtained them from the other people in the campaign after the campaign ended.

Q Did you ever discuss with Mr. Hubbell the fact that he maintained certain Whitewater Development Corporation files at his home in Washington?

A No. Not in that sense. I mean, I think I was aware by October of 1993 that he had gathered a number of documents related to Whitewater and other things that had come up during the campaign. And as I said, I believe we were trying to put them in some order, and determine what we needed to keep and what

122

needed to be deposited and what might rise to the level of an important record and what frankly didn't need to be kept.

Q Did there come a time when you brought the documents to a lunch that you attended with Judge Hubbell and I believe with Mr. Quinn present?

A No, that's the other way around.

Q Okay.

A He had some documents, "he" Hubbell, which he wanted to deliver to me. He either delivered them to me that day at the White House or it's quite possible I took one look at them and said that I didn't want to have to haul them around and didn't asked him to send them to me, but one way or the other they were transferred from him to me.

Q Do you recall approximately how many documents were transferred from Mr. Hubbell to you?

A I really don't off the top of my heed.

Q Was it a banker's box full of documents?

A I don't think it would have been that many.

Q Do you recall what the documents referenced?

123

A Yeah, I remember I did get them from him one way or the other, as I say. I went through them and my recollection is that they are things like press reports, clips, copies of other documents that frankly I'd already seen. I'm relatively confident that at the time that I didn't see anything that was any news to me or that would have been of any value to us at the time we did our analysis. And as I say, I believe those documents have all been given to the independent counsel and to the Congress by David Kendall. I will double-check that.

Q Did you discuss those documents at the lunch with Mr. Quinn and Mr. Hubbell?

A No.

Q Okay. In July of 1993, we have phone records indicating that you left messages for Mr. Hubbell on four occasions on 7/14 two calls, 7/20 one call, 7/26 another call. Do you recall during any of those conversations discussing with Mr. Hubbell David Hale?

A No.

Q Do you recall ever discussing David Hale

124

with Mr. Hubbell?

A No, I don't believe I ever did.

Q Do you recall ever discussing David Hale with Mr. McLarty?

A No, I don't believe I ever did.

Q Do you ever discuss Mr. Hale with Mr. Kennedy?

A No.

Q And when you say no -- strike that.

And that would be at no time have you ever discussed David Hale with Mr. Kennedy?

A At no time have I ever discussed David Hale with the Bill Kennedy.

Q Have you discussed David Hale with the President?

A No.

Q Have you ever discussed David Hale with Mrs. Clinton?

A No.

Q Have you ever discussed David Hale with Mr. Lindsey?

A No, as I told you before.

125

MR. COLE: Could you hold on one second, sir, and we may almost be done.

BY MR. GIUFFRA:

Q Sir. Okay. Do you know Paula Casey?

A No.

Q Have you ever discussed any RTC criminal referrals involving Madison or Whitewater with anyone at the Department of Justice other than someone from the Office of Independent Counsel?

A Not to the best of my recollection.

Q And it would be your testimony that the first time you would have heard of such referrals would have been in a conversation with Mr. Lindsey sometime in early October of 1993?

A That isn't what I believe I said. I mean, there may have been rumors circulating about this for some time, I really don't remember, but the first time I ever heard that there was any confirmation that referrals had been made came to me in October, early October of 1994 from either Jim Blair or Loretta Lynch or both of them identifying as their source Jeff Gerth.

126

Q You mean '93?

A I'm sorry, I do mean 1993.

Q And then you had a subsequent conversation. Did you provide the information to Mr. Lindsey?

A Yes.

Q Excuse me?

A Yes, I did indeed, yes.

Q Now, after speaking with Mr. -- and we are getting near the end. After speaking with Mr. Blair and Ms. Lynch, you called Mr. Lindsey; correct?

A Yes, I may have talked to Jim Blair and Loretta Lynch more than once before I talked to Lindsey, but I did talk to Lindsey and passed along to him the information that I had gotten from him.

Q Where was Mr. Lindsey when you spoke to him?

A I believe he was traveling with the President somewhere in California.

Q When you spoke to Mr. Lindsey did Mr. Lindsey indicate to you that he had any knowledge of the criminal referrals relating to Madison or

127

Whitewater?
A I don't remember that he did.
I don't remember that he didn't. I mean, I just passed along the information. It was, as I recollected, a very short conversation.
Q Did he indicate that he had learned of such referrals before you spoke to him, was it your understanding this was the first that he heard of these RTC criminal referrals?
A I mean, I can't answer that, I don't know how I could characterize it.
Q What was your impression?
A I'm not sure I had one. I just passed the information along to him.
Q But did Mr. Lindsey indicate to you that he was aware of such RTC referrals during the course of the conversation that you had with him the on or about the October 4, 1993?
A I don't recall.
Q And when you say that you don't recall, you don't have any --
A It was a very brief conversation.

128

Q About how long?
A Seconds.
Q Less than a minute?
A Probably.
Q And what did you say to Mr. Lindsey?
A To the best that I can tell, I told him the information that I had obtained.
Q Now, and that was that there were RTC criminal referrals in which the President had been named as a possible witness?
A No. I have think it was the Jeff Gerth.
Q We've lost you.
A I think it was information that Jeff Gerth had informed us that RTC criminal referrals had been made regarding Whitewater and -- or regarding Madison rather and they did not involve the Clintons. I don't think it was anything more than that.
Q So you did not advise Mr. Lindsey that the referrals in any way referenced the Clintons; correct?
A No, I'm not sure I understand your question. I think what I told him is what I just

129

said.
Q Could you just state it one more time? Because I'm a little bit confused. Maybe it's because we're on the telephone.
MR. HADDON: I don't think the telephone's got anything to do with it frankly. Let me have our reporter read it back to you.
(The reporter read the record as requested.)
BY MR. GIUFFRA:
Q Well, in his Congressional testimony in the summer of 1994 and I'm quoting at page 409 of the printed transcript, Mr. Lindsey says, "well, I believe what I probably indicated to him was that I'd spoken with Jim Lyons, that they were press inquiries about criminal referrals. That it was my understanding that there were criminal referrals that had to do with Madison and that I understood that the Clintons were mentioned in those referrals but that were not targets or the subjects of those referrals."
Now, what you are telling me now is that you did not mention the fact that the Clintons were

130

mentioned in the referrals to Mr. Lindsey?
A No, that isn't what I said. That isn't what I said a few minutes ago and that's not what I'm saying now.
Q Well, did you mention the fact that the Clintons were mentioned in the referrals to Mr. Lindsey?
A I mentioned as best as I can recall, Counselor, exactly what I've already testified to.
Q Well, it's little bit unclear what you testified to.
A Not to me it isn't.
Q Well, it is to me.
A I'm sorry for that.
Q And my question is a simple question. Did you state to Mr. Lindsey on or about October 4, 1993 that it was your understanding that the Clintons were mentioned in the RTC criminal referrals?
A I already answered the question.
Q Well, I'd like you to try to answer it, again.
A I already answered it twice.

131

Q You have not answered the question.
A This is the third time.
Q Why don't we have the reporter read the question back.
A You'll get the same answer.
Q Which is what?
A I've already answered your question twice. You are wasting my time and everybody else's.
MR. COLE: Mr. Giuffra, why don't you try to articulate for Mr. Lyons what it is that you don't understand about his answer so that we can try to the narrow this down and wind up this deposition.
MR. GIUFFRA: What I would like to know is whether he mentioned to Mr. -- whether he stated to Mr. Lindsey his understanding that the Clintons were mentioned in the referrals.
MR. COLE: My notes say that I just took from what he said that he said the Clintons that the referral did not involve the Clintons but that doesn't answer your question?
BY MR. GIUFFRA:
Q Is that your testimony that you did not

132

tell him -- that you told him that the referrals did not involve the Clintons?
A My testimony is as I've given it.
Q Do you want to have the reporter read his answers back because Mr. Cole's notes --
MR. COLE: My notes are of what Mr. Gerth said so maybe perhaps that's the confusion.
THE WITNESS: I wouldn't have told Lindsey anything more or anything less than what we learned from Gerth.
BY MR. GIUFFRA:
Q And did Gerth mention to you --
A I didn't talk to Gerth.
Q Did you learn -- you have spoken to Ishkoff?
A Came to me through Loretta Lynch, Jim Blair or both of them.
Q Did you have any understanding from Lynch or Blair that Gerth was indicating that the Clintons were mentioned in the referrals?
A I understood that the Clintons not to be named.

133

Q In any way in the referrals?
A I didn't go into that. You know, I was getting this information, Counselor, second- and possibly third-hand. I took it for what it was and I passed it along. It's as simple as that.
Q All right. Did you have any subsequent conversations with Mr. Lindsey in which he indicated that he had advised the President of what you had told him?
A I don't recall. I assume that he did advise the President.
Q Why do you assume that he did advise the President?
A He testified that he did, didn't he?
Q Other than from the fact that he testified, that he advised the President, do you have any other knowledge that Mr. Lindsey advised the President of the referrals?
A We may have had a subsequent conversation when he told me he told the President.
Q Well, did you have such a conversation?
A I said we may have. I don't recollect.

134

Bruce says he told him. If he says he told him, he told him.
Q Okay. Did you have any other subsequent conversations with Mr. Lindsey that you can recollect about the RTC criminal referrals?
A I don't think so. Certainly nothing that I can recollect now.
MR. GIUFFRA: Could you give me one second here.
THE WITNESS: Sure.
(Discussion off the record.)
MR. GIUFFRA: I have no further questions. Thank you have much for your patients, Mr. Cole.
MR. COLE: I don't have any questions at this time. I would like to state for the record that in addition to the fact that this deposition has gone on longer than I expected, I did not anticipate in today's deposition reviewing substantive issues concerning Mr. Lyon's report on Whitewater Development Corporation.
I certainly have questions for him about that report and about the documents that he has

produced to the special committee but I don't think this is the appropriate time for that and I think although Mr. Lyons may regard it as unfortunate it is probably inevitable that he will be back for a deposition here and I will defer my questions until that time.

MR. GIUFFRA: Okay. Thank you very much. Mr. Lyons, this concludes the deposition.

THE WITNESS: Thank you.

(Whereupon, at 8:50 p.m., the deposition was concluded.)

JAMES M. LYONS

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, **MARYBETH** PETERS, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Notary Public in and for the
District of Columbia

My Commission Expires NOVEMBER 30, 1999

ERRATA SHEET

Deposition of James M. Lyons (In re: Whitewater)
November 2, 1995

Page	Line	Change from	Change to	Reason
19	09	David Ipshen	David Ifshin	EIT[1]
19	12	quoted	included	EIT
19	14	John Smith	John Schmitz	EIT
20	21	marginally	generally	EIT
21	03	filed itself.	filed.	EIT
35	22	1982	1992	EIT
39	02	interest in	investment in	EIT
44	16	Wayne Kennedy	William Kennedy	EIT
46	17-19	[Answer]	Cont'd question by Guiffra	EIT
48	07	I am	They were	EIT
48	19	Not aside	Not outside	EIT
49	18	In a month,	Once a month,	EIT
51	17	some weeks after	some days after	EIT
52	07	Vincent's death	Vincent's office	EIT
56	02	you prepared	he prepared	EIT
61	10	Springvale	Springdale	EIT
75	18	No.	Not well.	EIT
103	07	Pat McCarthy	Patten, McCarthy	EIT
104	14	So for pages	So four pages	EIT
111	03	Mr. Weeks	Mr. Weese	EIT
111	09	Mr. Weeks	Mr. Weese	EIT
113	03	No, I was not, okay.	No, I was not.	EIT

[1]Error in transcription

Page	Line	Change from	Change to	Reason
113	21	taken by you in 1980?	taken in 1980?	EIT
116	14	legalese	galleys	EIT
124	13	the Bill Kennedy	Bill Kennedy	EIT
124	22	No	Not other than	EIT
134	13	patients	patience	EIT

DEPOSITION OF JULIE FRY YANDA
IN RE: S. RES. 120

THURSDAY, NOVEMBER 2, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of JULIE FRY YANDA, called for further examination pursuant to agreement by counsel, at 2:36 p.m. in Room 534 of the Dirksen Senate Office Building, before BRENDA M. SMONSKEY, a Notary Public within and for the District of Columbia, when were present:

VIET D. DINH, ESQ.
Majority Associate Special Counsel
H. CHRISTOPHER BARTOLOMUCCI, ESQ.
Majority Associate Special Counsel
NEAL E. KRAVITZ, ESQ.
Minority Principal Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

JERRY S. FOWLER, JR., ESQ.
F. JOSEPH WARIN, ESQ.
Gibson, Dunn & Crutcher
1050 Connecticut Avenue, NW
Washington, DC 20036
On behalf of the Deponent.

ALSO PRESENT: TIMOTHY P. MITCHELL

CONTENTS

WITNESS	EXAMINATION
Julie Fry Yanda	
by Mr. Dinh	8
by Mr. Kravitz	131
by Mr. Dinh	172
Errata	6754

PROCEEDINGS

MR. DINH: Good afternoon, Ms. Yanda. I apologize for keeping you waiting. We had hearings this morning. As schedules go, the hearings are probably the most hectic.

As you know, my name is Viet Dinh. I'm with the Majority staff of the Special Committee to investigate Whitewater Development Corporation and related matters.

The Special Committee was created by Senate Resolution 120 to be administered by the Senate Committee on Banking and Housing Affairs to conduct an investigation into Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, Capital Management Services, the Arkansas Development Finance Authority and other related matters.

Section 1(b)(2)(a) of Resolution 120 authorizes investigation and public hearings into whether any person has improperly handled confidential Resolution Trust Corporation -- I will refer to that from now on as RTC -- information from

the RTC relating to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation.

Section 1(b)(2)(b) of Resolution 120 authorizes investigation and public hearings into whether the White House has engaged in improper contacts with any other agency or department in the government with regard to confidential RTC information relating to Madison and Whitewater.

Section 1(b)(2)(d) of the same resolution authorizes investigation and hearings into whether RTC employees have been improperly importuned, prevented, restrained or deterred in conducting investigations or making enforcement regulations with regard to Whitewater. Roughly those are the subjects we will cover in today's deposition.

I should tell you this deposition is being taken in advance of public hearings to be held sometime in November of this year. We have not decided who will be among the final witnesses at such hearings. We will notify you in advance if you are indeed among such witnesses.

The stenographer will prepare a record of

5

questions and answers. The deposition transcripts will be treated as committee confidential until the commencement of public hearings. At that time the transcripts may be made public in whole or in part.

Prior to the hearings you will receive a letter from the committee telling you you may come to the Senate to review the transcript of your deposition and make note of any corrections for transcription on an errata sheet. That provision of the transcript is for the limited purpose of review, and the information should not be disclosed for any other reasons to the press or any other witnesses or to the general public.

THE WITNESS: You are saying I have to come to the Senate to review my transcripts?

MR. DINH: Yes. Those are the terms of the confidentiality agreement that was agreed to between the Minority and Majority staff.

MR. KRAVITZ: I should just say, as a general rule, witnesses are required to come to the Senate to review their transcripts because those transcripts are confidential and, under our security

6

procedures, can't leave the secure offices at the Senate in which they are stored.

Exceptions have been made in the past for out-of-town witnesses, and we should just discuss that with your lawyers and my prediction is that something could be worked out. It would have to be approved by the chairman and the ranking member. But in the past arrangements have been worked on.

MR. DINH: If you are indeed called to testify at the public hearings, you will be provided with your actual copy of your deposition transcript four days in advance of your testimony, again for the limited purpose of preparing yourself for those hearings and not to be discussed with other witnesses or to be released to the public.

You may be represented by counsel, and as I see, Mr. Warin, Mr. Fowler and another gentleman whose name I have misplaced in my mind --

MR. ST. CLAIR: My name is St. Clair. I represent the Resolution Trust Corporation.

MR. DINH: Thank you -- are here in this deposition. Objections to the form of the questions

7

will be noted for the record. Your counsel may object on two grounds and give you instructions not to answer. That is scope and privilege.

I should tell you that the committee chairman will ultimately rule on objections where the witness refuses to answer the question.

MR. ST. CLAIR: My name, as I said, is Muncell St. Clair. I represent the RTC.

Ms. Yanda and other witnesses are appearing because of the request of the Special Committee. As to depositions of RTC employees, the RTC is not waiving any applicable privilege as a result of its employees appearing and answering questions.

However, the RTC is not going to be asserting any applicable privileges during this deposition, and Ms. Yanda is free to testify. As I said, our understanding is that her testimony and the information she gives does not waive any applicable privilege.

MR. DINH: Swear in the witness, please.

Whereupon,

JULIE FRY YANDA

8

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. DINH:

Q State your name for the record.

A Julie Fry Yanda.

Q What is your address?

A Home address?

Q Office.

A My office address is 4900 Main Street in Kansas City, Missouri.

Q Can you give us your office phone number.

A My office number is 968-7211.

Q From the time you received notice of this deposition, have you had any conversations with anybody besides your counsel and your immediate family members about the subjects that you are called

9

here to testify about?
A No, I have not.
Q Have you been interviewed or questioned under oath by any investigative agency or individual about the substance or subject matter that you have been called to testify about?
A Under oath?
MR. WARIN: Historically?
MR. DINH: Yes.
MR. WARIN: You ought to identify earlier interviews.
THE WITNESS: I haven't been under oath, but I have been interviewed.
BY MR. DINH:
Q Are these by the Special Counsel or Independent Prosecutor?
A The first one was with the FBI agents who worked on behalf of the Independent Counsel. Then I was interviewed by one of the attorneys for the Independent Counsel's office. Then I was interviewed by the House -- some attorneys for the House Banking Committee.

10

Q When you say Independent Counsel, do you mean Mr. Starr?
MR. WARIN: I don't know that she knows whether it was Starr or Mr. Fiske.
BY MR. DINH:
Q Approximately when were you interviewed by the FBI agents representing Independent Counsel?
A In May of 1994.
Q When were you contacted by the attorneys representing the Independent Counsel?
A November of 1994.
Q You gave testimony to the House this past summer of 1995?
A I was interviewed.
Q You were not called as a witness?
A No, sir.
Q Do you know what the approximate month that was this summer for the House interviews?
A I'm sorry. I don't recall.
Q I will ask you a little bit about your professional background. Who do you work for now?
A The Resolution Trust Corporation,

11

professional liability section.
Q What is your current position there?
A Senior counsel.
Q What office are you based out of?
A Kansas City.
Q How long have you been at that position?
A Since May of -- since May of 1994.
Q When did you join the Resolution Trust Corporation?
A January of 1991.
Q Can you give us a history as to the positions you held since January 1991 with the RTC.
A I was the section chief.
Q This is starting in January 1991?
A When I began work in January 1991, and I remained section chief until I was made senior counsel in May of 1994.
Q Section chief of what section?
A The professional liability section.
Q Have you been with the Kansas City office since January 1991?
A Yes, sir.

12

Q Can you give us a brief history of your professional experience prior to joining the RTC?
A I graduated from the University of Missouri at Kansas City law school in 1979. I went to work for a labor law firm in Kansas City. I stayed with them for approximately one, year and then I joined the law firm of Pat Hartigan and eventually was made a partner. It was Hartigan & Yanda. I stayed with Mr. Hartigan until December of 1990.
Q Then your next position was with the RTC?
A Yes, sir.
Q What kind of work did you do as a partner at Hartigan & Yanda?
A Our emphasis was in fidelity, surety, construction contract law.
Q Did you do any criminal work? Did you do any criminal representation, defense or investigation while you were at Hartigan & Yanda?
A In the context of representing some of my clients, there would be allegations of criminal misconduct that may be raised or interspersed in the defense of some of the claims that I worked on. In

13

that context, yes.
Q But your primary reason for representing a client is not with respect to criminal matters but those arise only as ancillary matters to your representation of them relating to fidelity, surety and construction contract law?
A No, sir. By the nature of the work, criminal allegations were sometimes the very fundamental basis of the claims that were made, particularly under fidelity law.
Q Approximately -- and I'm not asking for any exact figures here -- what percentage of your work dealt with criminal matters such as the ones you just described?
A In the context of fidelity and surety work?
Q And construction contract law, what percent of your practice?
A The fidelity and surety portion of my practice was approximately 50 percent of what I did.
Q What portion of that usually involved criminal allegations or defense or investigation?

14

A They were always interspersed in one form or another, sir, in the context of the fidelity claims.
Q Let me ask you about your employment at the RTC. Who did you report to when you were section chief of the PLS section in Kansas City?
A At what point in time?
Q Well, why don't we start in 1993, January of 1993 and go on until the end of 1994, and I know that that encompasses your elevation to senior counsel after May of 1994.
A You want me to start in January of 1993?
Q Yes.
MR. WARIN: The question is who did you report to.
THE WITNESS: My supervisor was Russ Kaufman, and I -- the regional counsel for the Kansas City office was Glion Curtis. I had a broken line reporting to Tom -- David Eisenstein and Tom Hindes.
BY MR. DINH:
Q David Eisenstein and Tom Hindes are attorneys in Washington, D.C.?

15

A Yes, sir, with the professional liability section.
Q Mr. Curtis and Mr. Kaufman both are based in Kansas City?
A Yes.
MR. KRAVITZ: You mean at the time.
MR. DINH: At the time I mean.
BY MR. DINH:
Q By "broken line," you mean you reported through Mr. Kaufman and Mr. Curtis to Mr. Eisenstein and Mr. Hindes?
A No, sir. On substantive matters, I would report to Mr. Hindes. On administrative matters and reporting line structures, my boss was Glion Curtis and Russ Kaufman.
Q Can you tell me when that reporting relationship changed?
A In 1994.
Q Approximately what month?
A It was in the spring. I'm sorry, I don't know the month.
Q Do you know approximately how many months

16

you were in this new reporting relationship before you were made senior counsel in May of 1994?
A The new reporting structure?
Q Right.
A I'm sorry, I don't understand.
Q You stated you did not recall when in the spring the reporting relationship changed. I'm trying to refresh your memory by pegging it to when your personal situation changed with respect to the title of your job in May of 1994.
A I'm sorry. I just don't recall.
Q To whom did you report in the spring of 1994?
A When the reporting lines changed, I reported directly to Washington, to Mr. Hindes.
Q You no longer reported even on administrative matters to Glion Curtis or Mr. Kaufman?
A No, sir.
Q What prompted the change?
MR. WARIN: To the best of your knowledge, if you know.

17

THE WITNESS: I don't know what prompted it. I know that there was a document that was issued that changed the reporting line.

BY MR. DINH:

Q Who issued the document, do you know?

A One was issued by Ellen Kulka and the other by Jack Ryan.

Q And Ms. Kulka at the time was general counsel of the RTC?

A Yes, sir.

Q What was Mr. Ryan's position at the time?

A I think -- he was the head of the agency.

Q He was above your pay grade, in any event.

MR. WARIN: Way above it.

BY MR. DINH:

Q Has that reporting relationship continued after you were made senior counsel?

A Yes, sir.

Q To the present day?

A Yes, sir.

Q With respect to your position as section chief, how many employees did you have immediate

18

supervisory authority over?

A At what point in time?

Q Starting in January of 1993 through the present.

MR. KRAVITZ: She is not section chief anymore.

BY MR. DINH:

Q Well, through May of 1994 then.

A I at that time supervised the staff of the Kansas City professional liability section office.

Q How many attorneys approximately were in that section?

A There were in January of 1993 approximately 10 lawyers.

Q Mr. Phil Adams and Ms. Karen Carmichael were among those lawyers?

A In January 1993, yes.

Q When did they stop being lawyers under your supervision?

A Excuse me. I'm going to have to correct something. I do not recall when Phil Adams began work with the professional liability section office.

19

Karen Carmichael was certainly there in January of 1993, but I just don't remember when Mr. Adams started.

Q Are they still under your supervision?

A Karen?

Q Yes, Karen Carmichael.

A Yes.

Q Karen Carmichael is still under your supervision right now?

A As senior counsel, yes.

Q Was she under your supervision at all times you were the PLS section chief?

A Yes, she would have been.

Q And Mr. Adams?

A Yes, sir. As long as they were with the professional liability section, they were under my supervision.

Q Is Mr. Adams still in your supervision now as senior counsel?

A Yes, sir.

Q What does the professional liability section do?

20

A We investigate the professional liability claims arising out of failed financial institutions.

Q By "professionals" you mean accountants, officers, directors and officers?

A Yes, sir.

Q These are civil investigations?

A Yes, sir. That role changed with the June 17, 1993 directive.

Q But before June 17, 1993, your function was primarily civil?

A Primarily, yes.

Q Exclusively civil?

A No, because we would interplay with the criminal group because sometimes the criminal referrals would impact particularly on a fidelity bond claims and we had to be careful to try and coordinate those efforts.

Q Your primary responsibility was over civil claims?

MR. WARIN: I think she has testified to that.

BY MR. DINH:

21

Q Yes?
A That was the primary focus of my work, yes.
MR. KRAVITZ: So we are clear, you are still talking about the pre-June 17 --
MR. DINH: Yes.
BY MR. DINH:
Q By the criminal section, do you mean the investigations section?
A The criminal group that Mr. Iorio created inside the Kansas City investigators unit, yes.
Q Mr. Iorio, is that Richard Iorio?
A Yes.
Q What is his position in the investigations unit?
A His title has changed throughout the years but he currently is the field investigative officer.
Q What was his title in 1993?
A I don't recall.
Q Was he a head of the investigations unit?
A Yes, sir, in the Kansas City office.
Q Did there come a time when you became aware

22

of Madison Savings & Loan Association?
A Yes.
Q Can you tell me approximately when you were first aware of that association and under what context?
A In the spring of 1991.
Q How did you come about this knowledge?
A I was asked by Washington PLS to secure the regional office sign-offs on an authority-to-settle memorandum involving that institution.
Q An office sign-off on the --
A The regional office sign-off for the authority-to-settle memorandum out of Madison.
Q Can you explain to me what an authority-to-settle memorandum is?
A It is the mechanism that we in professional liability section use to secure authority to either initiate or settle litigation.
Q What litigation was this involving? Was this involving the professional liability claims arising out of Madison Guaranty?
A The accountant.

23

MR. WARIN: A professional?
BY MR. DINH:
Q Exactly.
A The account liability claim out of Madison, yes.
Q Do you know the name of the accountant?
A No, sir.
Q Do you know what company he was working for?
A No, sir.
Q Was this the Frost & Company litigation?
A I'm sorry, sir. I don't know.
MR. WARIN: She wasn't involved in it.
BY MR. DINH:
Q Which leads me to my next line of questioning. What exactly do you mean by a regional office sign-off?
A In 1991, there were approximately six to eight different signature lines that you had to get signed off on in order to have an authority memo approved in this agency. At least two of those signature lines involved the regional offices. In

24

our case it was Mr. Curtis, who was our regional counsel, and our vice president, one of our vice presidents, who would sign off. His name was Mr. Thompson.
Q Jim Thompson?
A Yes.
Q They asked you or one of them asked you to look at this memorandum --
A No.
MR. WARIN: I think her testimony was somebody in Washington in the PLS section contacted her and said could you get these two sign-offs on a settlement that Washington was doing.
BY MR. DINH:
Q Can you tell me who the person in Washington is?
A Sitting here today, I just don't recall who it was.
Q Could it have been April Breslaw?
A I just don't know, sir.
Q So, you were not involved substantively in the sign-off itself? That was Mr. Curtis and

25

Mr. Thompson's authority and responsibility?
A Yes, sir. There was no delegated authority to the field personnel.
Q But the call came to you in order to get these sign-offs?
A Yes, because I headed up the regional office of the professional liability section.
Q What steps, if any, did you take in order to respond to this request?
A I physically carried them to Mr. Curtis's office and to Mr. Thompson's office.
Q And were they signed off?
A Yes.
Q While you were there, in your presence?
A Timewise, I don't recall. I don't recall if they physically signed them off in my presence or not.
Q But they were done fairly expeditiously when you walked them to their offices?
MR. WARIN: She didn't have a recollection, Viet.
THE WITNESS: I don't recall.

26

MR. DINH: Contemporaneous or not, whether they were done in her presence. Now I'm moving on to what kind of time frame it was. Whether or not she had a recollection with respect to them signing in her presence is a completely different matter to whether they were signed somewhat contemporaneously in the same time frame as when she brought them back to their offices.
I would appreciate if you would permit the witness to answer the questions. You can state your objections as to the form of the questions, and I certainly would try my best to clarify the questions.
MR. WARIN: That was an unclear question. My effort was to try to clarify that for you.
MR. KRAVITZ: Is there still a question pending?
MR. DINH: Yes.
BY MR. DINH:
Q Did they sign it fairly promptly after you brought it to their attention?
A I don't recall.

27

Q Thank you.
When was the next time you became involved or became aware of Madison Guaranty?
A The vice president of our office --
Q The same vice president, Mr. Thompson?
A Yes. He called me, I believe, in the fall of 1991.
Q And what was the purpose of this call?
A It was a newspaper article relating to Madison that had appeared in some East Coast paper. He asked me if I could get some information for him.
Q Do you know by what means did he come about to know about this newspaper article, Mr. Thompson?
A Do I know how he --
Q Yes. Did he tell you where he got this newspaper article at the time?
A Yes. It was in the Kansas City Star.
Q It was not an East Coast newspaper article?
A Yes. I mean it was an East Coast newspaper article.
MR. KRAVITZ: She said it was in the Kansas City --

28

THE WITNESS: It was the Kansas City Star. It was an AP article.
BY MR. DINH:
Q It was filed in the East Coast? Is that what you mean by an East Coast newspaper article?
A Yes.
Q What exactly did this newspaper article say with respect to Madison Guaranty Savings & Loan Association?
A I don't know that I read it.
Q But you were just simply asked to gather some information regarding Madison?
A Yes, sir.
Q And what steps did you take, if any, in response to this request?
A I contacted April Breslaw.
Q You contacted April Breslaw in Washington, D.C.?
A Yes, sir.
Q What is her position in Washington, D.C.?
A She is a senior attorney with the professional liability section of the RTC.

29

Q Why did you contact April Breslaw?
A Because Madison was her case. It had never been sent out to my office for handling or any responsibilities.
Q That is within the PLS section, it had never been sent out to your office?
A Yes, sir.
Q So, the substantive responsibility for the case was in Washington, D.C. with April Breslaw at the time?
A Yes, sir. And at all times thereafter.
Q And at all times thereafter.
Did she respond to your inquiry in any sense?
A Yes, sir. She sure did.
Q What did she do?
A She gave me the information that Mr. Thompson wanted and I relayed that to Mr. Thompson and that was the end of it.
Q What sort of information?
A I don't recall the specifics. I just recall that they were triggered after JT read this

30

newspaper article.
Q Can you generally tell me what information? Did it relate to the professional liability claims against Madison? Did it relate to any pending criminal investigation? Can you tell me the general subject area relating to Madison Guaranty?
A The general subject matter was the investments in Whitewater Development Company.
Q Investment by whom?
A Mr. Clinton.
Q By Mr. Clinton.
Did Mr. Thompson at any time after the fall of 1991 approach you for similar information or updates regarding Madison Guaranty?
A At any time after 1991?
Q Yes.
MR. WARIN: Go ahead.
MR. KRAVITZ: I would just --
MR. DINH: If your attorney has an objection, he can state it for the record.
THE WITNESS: It was Mr. Kravitz I was

listening to.
MR. DINH: That applies to Mr. Kravitz as well.
MR. WARIN: Let me confer with my client.
(Counsel conferred with the witness.)
MR. DINH: Before the reporter reads back the question, I would like to request counsel to permit the witness to answer the question before you confer with your client.
MR. KRAVITZ: I have yet -- come on --
MR. WARIN: I will confer with my client as I perceive appropriate.
MR. DINH: I think I am entitled to an honest unrehearsed answer --
MR. WARIN: You will get an honest unrehearsed answer. Anything I confer with her about is legal advice, and that has nothing to do with honesty and to suggest otherwise is inappropriate for any committee counsel or any lawyer to say to another lawyer, that when one confers with a client there is going to be a suggestion of unhonesty or dishonesty.
MR. DINH: I apologize for the

misspeaking. I meant contemporaneous or extemporaneous unrehearsed answers.
I certainly do not mean any disrespect or any allegations of impropriety with respect to opposing counsel.
THE WITNESS: What about the witness?
MR. DINH: And the witness.
THE WITNESS: I appreciate that. It is my integrity, too.
What was the question, please?
(The reporter read the record as requested.)
THE WITNESS: He never approached me and asked me for updates. He told me at another point in time that there were some referrals going out relating to Madison. He was telling me a fact. He wasn't asking me for anything.
BY MR. DINH:
Q Do you know approximately when he told you this fact?
A Yes, sir. He told me in the fall of 1992.
Q Do you know exactly when in the fall of 1992?

33

A It is when the first set of Madison referrals went out.
Q Was it before or after the first set of Madison referrals went out?
A After.
Q It was after. By the first set of referrals, I take it you mean referral number CR 0004, the one referral coming out in 1992?
MR. WARIN: Why don't you ask her if she has a basis for knowing the number in the referrals.
THE WITNESS: I don't know about the numbering. I thought there were more than one referral that went out in 1992.
BY MR. DINH:
Q Did you express an interest to Mr. Thompson regarding these criminal referrals?
A No, sir.
Q He just volunteered this information to you in the fall of 1992?
A No. We were in a meeting and Mr. Iorio came out to Mr. Thompson's office. Mr. Thompson and I were out in Overland Park, Kansas. Mr. Iorio and

34

the investigative unit were in Kansas City, Missouri. Mr. Iorio came out and during that meeting Mr. Thompson told me about the referrals going out, and Mr. Iorio gave me copies of them.
Q Was this a for-your-information kind of offer?
A Yes, sir. I wasn't asked to do anything related to that.
Q Between the fall of 1991 and the fall of 1992, between these two conversations with Mr. Thompson relating to Madison Guaranty Savings & Loan Association, did you have any other contact with, or did you have any other time when you became aware of Madison Guaranty Savings & Loan Association?
A No, none.
Q When was the next time that you became aware of this institution again?
MR. KRAVITZ: When you say the next time she became aware of it, presumably she is aware of it all along. Do you mean the next time she actually heard something about it or did something with regard to it?

35

BY MR. DINH:
Q When you heard something about it.
A Let me put this in context for you. First of all, I'm not all that sure I was aware in terms of actively knowing, doing or saying anything about it.
Q I did not ask you whether you were involved in any investigation or doing anything. I was merely asking you whether you heard anything respecting it. That's why I chose the word "aware." I think Mr. Kravitz is correct in clarifying as to when was the last time you heard something about the institution.
MR. WARIN: Chronologically where we are is sometime after the fall of 1992 and the question as posed, what is your next memory of your awareness of something having to do with Madison intersecting your life after the fall of 1992.
THE WITNESS: In May of 1993, Mr. Thompson told me that investigations was working on an additional set of criminal referrals relating to Madison, and he asked me -- excuse me. He told me two things: Number one, that they were working on an

36

additional set of criminal referrals; and number two, that he had directed that they reexamine the civil side of the Madison claims as well from an investigative perspective.
He asked me if I would assign a lawyer to work alongside the investigative unit on the civil side of this review.
BY MR. DINH:
Q Now, when you say reopen the civil investigative side of Madison Guaranty, were you involved in the initial investigation at all?
MR. WARIN: Excuse me. Her testimony was reexamine, not reopen.
BY MR. DINH:
Q Reexamine.
A I'm embarrassed now. I have lost the question
(The reporter read the record as requested.)
THE WITNESS: Not in any way, shape or form in the initial civil investigation.
BY MR. DINH:
Q And the suggestion that the investigation

37

be reexamined, from whom did the suggestion come?
A Mr. Thompson.
Q Was that communicated to Mr. Thompson by Mr. Iorio, to the best of your knowledge?
A I don't know if Mr. Thompson -- how or what mechanism he used with Mr. Iorio to trigger that.
Q This was in May of 1993 --
MR. WARIN: Actually, your predicate was a different one. I think you said did Iorio communicate that to Thompson.
THE WITNESS: That's why I was a little confused. I tried to restate it.
MR. WARIN: Do you have any knowledge of that, what communication there was with Iorio and Thompson on this matter?
THE WITNESS: No, I don't.
BY MR. DINH:
Q You have no knowledge as to what basis for which Mr. Thompson suggested that you reexamine the prior investigation?
A No, sir, I don't.
Q Did you assign a lawyer to reexamine the

38

prior investigation?
A To work with the investigative unit.
Q To work with the investigative unit at the suggestion of Mr. Thompson?
A Yes, I did.
Q Which lawyer was that?
A Mr. Philip Adams.
Q Did you make that assignment also in May of 1993?
A Yes, sir, I did.
Q Was there any particular reason as to why you chose Mr. Philip Adams?
A Absolutely.
Q Can you tell us what those reasons were?
A Mr. Adams was a former federal prosecutor who worked with the Kansas City U.S. Attorney's Department of Justice office in Kansas City, and he worked on the strike force in his career. He was, from my perspective, a perfect person to tap to do this because of his federal prosecutorial experience.
Q What was the scope of Mr. Adams's

involvement with the investigations unit? Was it limited simply to the reexamination of the prior civil investigation or was it also substantively to advise them with respect to the criminal investigation they were conducting?

A At what point in time?

Q May of 1993, at that time, with your understanding that you appointed him.

A His role at that time was on the civil side.

Q Did that role change at some point?

A Yes, sir, it did.

Q When did that change?

A In the fall of 1993.

Q Can you tell me what prompted the change?

A Well, two things. First of all, PLS's role changed with the issuance of the June 17, 1993 directive that required the professional liability section to review referrals before they go out to the U.S. Attorney's Office.

Two, the referrals came -- Mr. Adams was the one who became aware that the referrals were

actually ready to go to the Department of Justice in the fall of 1993.

Q Do you know approximately when in the fall of 1993?

A September 24th, I believe.

Q With respect to the June 17, 1993 directive, do you know who authored the directive?

A No, sir, I don't.

Q Let me refer you to exhibit Bates stamped TH 8703.

(Witness examined the document.)

Is that the directive to which you refer?

A I have never seen it with C-1 printed on it.

Q I'm sorry. C-1 is just an internal security mechanism we have in accordance with our security procedures which you had a glimpse of earlier with respect to the deposition transcripts. So ignore the C-1.

A Well, the last page of this exhibit is the beginning of another document that has Mr. Ausen's handwritten note on it, but the first six pages of

41

this document appear to me to be an accurate copy of the June 17th directive.
Q Can you read me the name of the first person on that list as to whom it was from?
A It is indicated that it is from Mr. James R. Dudine.
Q The rest are?
A Mr. Thomas L. Hindes, Mr. James M. Barker and Mr. Jerry Patchan.
Q And this is the directive that changed the role of the PLS section with respect to criminal referrals?
A Yes, sir.
Q How substantively did it change?
A Prior to this point in time, when and if PLS would get a copy of the criminal referrals, it would always be after the referrals were out the door.
Q As an informational objective?
A I don't know the purpose of it. I'm just telling you when we got them.
Q And after the directive?

42

A PLS was required to review the documents except in rare circumstances, according to the directive, prior to the time that the criminal referrals were sent to the Department of Justice.
Q Since June 17, 1993, have you -- by "you," I mean the PLS section -- in fact referred every criminal referral -- reviewed every criminal referral before it went out the door?
MR. WARIN: You are talking about PLS Kansas City, her unit? Obviously she can't speak on a macro basis for people.
MR. DINH: Right.
THE WITNESS: Sir, my group has reviewed all those that have been sent to us that we have been aware of.
BY MR. DINH:
Q Are there criminal referrals that you have been aware of that have not been sent to you?
A I'm aware that there is an allegation out there that there are some referrals that did not come to us. I don't have copies of the referrals.
Q And these allegations are that they are not

43

sent to you, so that they were not reviewed by you --
A That's right.
Q -- before they went out the door?
A Yes, sir.
Q Beyond generally allegations, do you have any knowledge of any specific allegations as to what criminal referrals they are or the number of criminal referrals with respect to these allegations?
A Ones that I haven't reviewed?
Q Right.
A I --
MR. WARIN: He is asking you beyond the general knowledge you have, do you have any more specific knowledge.
MR. KRAVITZ: He hasn't really asked her what the general knowledge was first. All she said is she heard allegations.
MR. DINH: The general knowledge of the allegations.
MR. KRAVITZ: Do you want to just ask her what the allegations are that she has heard? Maybe we could start there.

44

MR. DINH: Sure.
THE WITNESS: The allegations that I have heard are those that Ms. Lewis made at her testimony in front of the House, that there were some criminal referrals that postdate the June 17, 1993 directive that PLS did not review prior to the time those referrals went to the Department of Justice.
BY MR. DINH:
Q Do you know how many?
A I don't know.
Q With respect to the criminal referrals that you were talking about that you became aware of on September 24, 1993, these are referrals I take it that relate to Madison Guaranty Savings & Loan Association?
A Yes, sir.
Q And from where did these referrals originate?
A They were drafted by the Kansas City office of investigations.
Q What happened on September 24, 1993?
A Mr. Adams met with Ms. Lewis, and during

45

that conversation, she mentioned that the referrals were ready.
Q The referrals were ready?
A Yes, sir.
Q Did those referrals subsequently -- did Ms. Lewis subsequently send those referrals to the PLS unit for review?
A No. She didn't send them. We went and got them.
Q What were the circumstances surrounding your going to get them?
MR. WARIN: You mean beyond having them picked up or someone picking them up?
MR. DINH: Right.
BY MR. DINH:
Q Why did you go and pick them up?
A Well, when Mr. Adams told me that these referrals were ready, I called Mr. Iorio, and I reminded him of the June 17th directive, that PLS needed to review these documents pursuant to that directive.
Q Did Mr. Iorio raise any objections to you

46

with respect to that reminder?
A He said he wasn't aware of the directive. So I faxed it over to him.
Q After he read the directive, did he register an objection?
A No. To the contrary. He agreed with me that we would have two weeks to review the referrals.
Q Two weeks from September 24th?
A I don't recall the date that Mr. Iorio and I made that agreement.
Q Do you know the exact date that you or somebody in the PLS section went over to pick up the referrals? When did you start your two-week period?
A From the day we picked up the referrals.
Q You do not know what the approximate date of that is?
A I remember it was a Friday. I don't remember anything else.
Q And you agreed with Mr. Iorio that it would be completed within two weeks?
A I gave him my word.

47

Q Was there a discussion with respect to that? Was Mr. Iorio concerned that it would take more than two weeks?
A If he was concerned about it taking more than two weeks, he didn't express that concern to me. He was just adamant that I keep my word that it be done --
Q Why did you feel the need to give him your words that it would take only two weeks?
A Because he asked me for a commitment.
Q As to the time?
A Yes, sir.
Q Prior to him asking you for a commitment, did he express to you any concern as to the length of time it may take for you to complete your review of the referrals?
A During our discussion, he did indicate that he was concerned that we get it done as quickly as possible.
Q Do you know what the basis for that concern was? Did he express that to you during your conversation or discussion?

48

A Not Mr. Iorio.
Q Have you come to any subsequent knowledge as to what the basis of his concern was?
A Mr. Iorio's concern? No.
Q What, if anything, did you -- what steps, if any, did you take with respect to these referrals when they were finally in your hands?
A The first thing we did was -- the referrals came over without any exhibits and there were numerous exhibit references in the referrals. So we contacted -- Phil contacted Mr. Ausen and asked for copies of the exhibits, which we got a day or two later.
Q And then -- let me back up. Who in your office was involved in doing the actual review of these referrals? Was it you?
A No, sir. It was our criminal coordinator, Karen Carmichael, and our former federal prosecutor Phil Adams.
Q Criminal coordinator, she is an attorney in the PLS section?
A Yes, sir.

49

Q And she has an additional title of being a criminal coordinator?
A Yes. My supervisor at the time, Mr. Kaufman, appointed her the criminal coordinator for the Kansas City office.
Q Do you know if she had any experience with respect to criminal investigations?
A She was a criminal coordinator in the Tulsa office.
Q Prior to her employment as criminal coordinator in the Tulsa office?
A She was never criminal investigator in the Tulsa office.
Q Criminal coordinator. I misspoke again.
A No, sir, I'm not aware if she did or not.
Q You are not -- you don't have knowledge with respect to her former prosecutorial experience like you have with respect to Mr. Adams?
A No, sir, I don't.
MR. KRAVITZ: You are not suggesting that experience as a prosecutor is the only way to get experience in criminal matters, are you?

50

MR. DINH: Off the record.
(Discussion off the record.)
MR. DINH: I am merely asking questions, Mr. Kravitz.
BY MR. DINH:
Q Do you know when Ms. Carmichael and Mr. Adams completed their review of the criminal referrals?
A Yes, sir.
Q Can you tell us when that is?
A The morning of October 8.
Q The morning of October 8. How did you come about to know that they had completed?
A Throughout that two-week period of time I was talking to them on a daily basis.
Q You were getting progress reports from them or were you substantively involved asking questions about what they were doing?
A The progress reports would take the form of me asking where they stood, what they needed, did they need more resources, that kind of thing.
Q And on October 8, did they send a

51

memorandum to you or an E-mail or did they tell you orally that they had completed their criminal referral review?

A They E-mailed it to me.

Q What did they E-mail to you?

A The results of their review of the referrals.

Q Were these results written?

A Yes, sir, they were.

Q And what did you do to the E-mail or the written results that you received from Ms. Carmichael and Mr. Adams?

A Consistent with what I do with every memorandum that comes across my desk and every memorandum that I have worked on since I began the practice of law 16 years ago, I sat down, went through the document, made sure that it made sense to me. If I had any additional questions, I would get them answered. I had Mr. Adams and Ms. Carmichael into my office. Whatever questions I had, they answered. I finalized the document and sent it over.

52

Q Did you sign the document?

A No, sir.

Q Did Ms. Carmichael and Mr. Adams sign the document?

A Sir, it is an E-mail document. You can't sign it.

Q Let me refer you to exhibit PLS 0001S. It is an October 7, 1993 interoffice memorandum from Karen Carmichael, Philip Adams to Julie Fry Yanda.

(Witness examined the document.)

A Yes, sir.

Q Have you seen this document before?

A Again, I have never seen it with this H-1 printed on each page.

Q Again, the H-1 is another designation of security. It stands for highly confidential as opposed to the C-1 which means only confidential. Now you have another glimpse of our security procedures.

A It appears to be a copy of the PLS review memorandum that was generated in response to the Madison referrals pursuant to the June 17 directive.

53

Q Was this the memorandum that was sent to you via electronic mail on October 8, 1993?
A I have no way of knowing if this is the document that came to me or the document that went out from my office. Sitting here today, I don't know.
Q But the substance of it, does it approximate what you recollect to be what you reviewed at that time with Ms. Carmichael and Mr. Adams?
MR. WARIN: Can you tell?
THE WITNESS: Yes, it appears to be a copy.
BY MR. DINH:
Q This is a hard copy; this is not a printed electronic mail message. This is a copy on Resolution Trust Corporation letterhead?
MR. WARIN: The record speaks for itself. It is obviously on letterhead. Is there anything to distinguish this from an E-mail document?
THE WITNESS: I attach these documents to my E-mails. That's what this is.

54

BY MR. DINH:
Q To whom did you forward the E-mail to on October 8, 1993?
A The E-mail with this attachment?
Q Yes.
A To the individuals in my reporting changes, which would have been Mr. Curtis, who is my boss in the Kansas City office, Mr. Kaufman, my supervisor, Mr. Hindes. I don't recall sitting here who else it went to.
Q Let me refer you to Bates stamp exhibit TH 0765 and ask you to review that.
(Witness examined the document.)
A Yes, sir.
Q Is that the E-mail with which you attached the legal review memorandum as far as you can tell?
A Yes, sir. Again, I don't know that the document you showed me that purports to be the memorandum is the one that I in fact attached here, but yes.
Q You attached a legal review memorandum to this E-mail?

55

A Yes, sir, I did.
Q Can you read the names of the people that it went to?
A Mr. James R. Dudine, Mr. Thomas L. Hindes, Mr. E. Glion Curtis, Mr. Dennis M. Cavinaw, Mr. James G. Thompson, Mr. L. Richard Iorio, Mr. David M. Swiss, Mr. Russell F. Kaufman, Mr. Lee O. Ausen, Ms. L. Jean Lewis, Mr. Carl F. Gamble.
That's the addressees. With carbons to Ms. Karen L. Carmichael and Mr. Philip J. Adams.
Q Can you tell me how many legal reviews the PLS section in Kansas City had performed prior to this?
A Innumerable.
Q Innumerable?
A Yes.
Q Was this between June 17, 1993 and that time?
MR. WARIN: You asked a different question. This is a review of a criminal referral. You asked how many legal reviews they had done.

56

BY MR. DINH:
Q By that I mean a legal review of a criminal referral.
A The practice I go through is indistinguishable whether it is a criminal referral or a civil authority review procedure. It is no different than what I did in private practice.
I'm not sure I understand your question, because this is what I do. I go through the process of determining whether the facts support the allegations and if there is evidence to support those facts.
That is my process of determining whether or not we have got a good fit to pursue the allegations. Whether they are civil or criminal, it makes no difference to me.
Q At the same time, can you tell me if you had applied this process to a prior criminal referral previous to October 8, 1993?
MR. WARIN: From the time of June 17 to October 8, had the PLS section done any reviews of potential criminal referrals?

57

THE WITNESS: Not of criminal referrals, because it wasn't our responsibility prior to June 17th. Subsequent to June 17th, there were no referrals that I was aware of or that anyone I know of in PLS was aware of that predated the Madison referrals.

BY MR. DINH:

Q Is this list of addressees the same list that you would use if you were forwarding a legal review of a civil referral?

A At that time most of these people would have been on that list. You have several criminal people on here that of course wouldn't be on a civil review.

Q Besides the criminal investigators on the list, would that be the exact list that you would send a civil review to?

A Civil reviews don't follow this path. I would get sign-offs from -- of course, Mr. Dudine, Mr. Hindes would have to sign off. Mr. Curtis would have to sign off. Mr. Cavinaw or Mr. Thompson would have to sign off. And Mr. Iorio would have to sign

58

off. In Mr. Curtis's absence, Mr. Swiss would have to sign off. In Mr. Swiss's absence, Mr. Kaufman, my boss, would have to sign off. But it is the same group.

Q It is the same group?

A Relatively speaking, depending on what the issue was and who was in the office at any given time they were the same group.

Q Mr. Iorio would also have to sign off on civil reviews?

A Oh, absolutely.

Q Is this part of the coordination between the investigations unit and the PLS unit?

A Absolutely. In fact, he had delegated sign-off authority on certain settlements at this time.

Q Did that sign-off authority continue after the June 17, 1993 directive?

A On the civil side, it sure did.

Q Can you tell me what happened to the criminal referrals after you completed your review? Did it subsequently get transmitted to the U.S.

59

Attorney's Office?
A I saw the letter of transmittal sending it to the U.S. Attorney's Office.
MR. WARIN: Were you involved in that transmittal?
THE WITNESS: No. I just got a copy of the letter.
MR. WARIN: You don't know? You saw a transmittal letter. I think that is not her bailiwick. You might want to flesh that out.
MR. DINH: I appreciate the clarification.
BY MR. DINH:
Q Do you recall what the date of the transmittal letter is?
A It is August 8 -- it is October 8, 1993.
Q The same date that you forwarded the legal review of the criminal referrals to the people who had to sign off on the legal review?
A Yes, sir.
Q Have you had any subsequent conversations with any of these people -- and I exclude the criminal investigators from that question -- all the

60

people who had to sign off on the legal review, have you had any subsequent discussions with them with respect to the speed that they went through the legal review and transmitted the criminal referral to the U.S. Attorney after that review?
MR. WARIN: I think you have confused apples and oranges. She testified to a review, and you asked her at one point how does this list compare to this list.
BY MR. DINH:
Q You sent the review out on August 8 -- October 8, 1993.
A Yes, sir.
Q The legal review is of the substantive criminal referrals?
A Yes, sir.
Q The criminal referrals --
MR. WARIN: Peg down to whom she sent that.
That went back to investigations, did it not?
BY MR. DINH:

61

Q You sent it back to the list of addressees on this E-mail to which you are referring right now?
A Yes, sir. But I don't want to confuse that with the legal sign-off on the civil side. It is just the same cast of characters.
Q Now I'm limiting my questions only to the criminal referral and specifically this set of criminal referrals.
A Yes, sir.
Q Have you had any subsequent conversations with any of the addressees of your E-mail with respect to the timing of your submission of the legal review of the criminal referrals and their decision to forward the criminal referrals themselves to the U.S. Attorney's Office on the same day?
A Of course I have been interviewed by the FBI --
Q I am talking about this list.
MR. WARIN: His question, albeit compound and there are two questions there, but the first question is did you have any substantive conversation after October 8, 1993 with any of the people on this

62

list regarding the speed with which the sending of the criminal referrals went.
You can answer that yes or no.
THE WITNESS: No.
MR. WARIN: Okay.
BY MR. DINH:
Q You did not ask them why they sent out the criminal referrals the same day you had completed the legal review?
MR. KRAVITZ: Have you established that those are the people that sent them out? Didn't you take away from that first question all the investigators? It is my understanding it is the investigators who sent them out --
BY MR. DINH:
Q Do you know who wrote the transmittal letter? Do you remember who wrote the transmittal letter of the criminal referrals?
A No, I don't remember.
Q Do you know who sent out -- in the normal course of procedure, do you know who sends out the criminal referrals? Is it like Mr. Kravitz says, the

investigator sends them out?
A Yes. It comes out from investigations. I just don't know if it is one consistent person or several.
Q It comes out from investigations?
A Yes, sir.
Q Do you have substantive authority with respect to the legal review of the criminal referrals to delay or stop the transmittal of criminal referrals?
A Do I have that authority?
Q In connection with your legal review of such referrals?
MR. KRAVITZ: Do you mean under the June 17 --
BY MR. DINH:
Q Under the June 17, 1993 directive. As I understand, that's the only source of your authority with respect to your legal review.
MR. WARIN: It sounds like he is asking you how do you interpret the June 17, 1993 memo in relationship to the ability to either delay or stop a

criminal referral.
THE WITNESS: I take issue with the characterization of delay. That's my problem here.
BY MR. DINH:
Q When you complete a review -- let's say you complete a review, you say this is inadequate, the criminal referrals. Hypothetically you say that this criminal referral is inadequate. What steps, if any, can you take in order to suggest or require the investigators not to send out that criminal referral which you thought to be inadequate to the U.S. Attorney?
A I can't stop them from sending it out. All I can do is review it, make recommendations to make it a stronger, more constructive document, and that's the extent of my authority. But by doing that review, I take issue with your characterization that I have somehow delayed those referrals.
Q No, no, no. The question was not a characterization of your process of review. The question was going to at the end of your review, do you have any substantive authority to delay pending

revisions of those referrals based on your review.
A No, sir.
Q So, to the best of your knowledge, did you see the criminal referrals when you saw the transmittal letter?
A Did I personally?
Q Yes.
A I did not.
Q Have you subsequently seen the criminal referrals after they were sent out to the U.S. Attorney's Office?
A No, sir.
Q Did you see them before they were sent out to the U.S. Attorney's Office? That is, did you see them when they were submitted to you for the legal review?
A Yes, I saw them.
Q Do you know from any other source of knowledge whether those criminal referrals were revised in light of the criminal referral review that your office performed?
A No, I don't.

MR. KRAVITZ: Would this be a good time to take a short break?
MR. DINH: Sure.
(Recess.)
BY MR. DINH:
Q Just to remind you, because we went off the record, of what we were discussing before, we were still talking about the legal review. In that respect, let me refer you to JY 009, an E-mail from Julie Yanda to Tom Hindes forwarded by Julie Yanda to Karen Carmichael.
(Witness examined the document.)
MR. KRAVITZ: What is the date?
MR. DINH: March 24, 1994.
BY MR. DINH:
Q With particular emphasis, can I direct your attention to the next to the last paragraph of that E-mail.
A Just a second. Let me finish reading it, please.
(Witness examined the document.)
MR. WARIN: You want to talk about the

67

first --
BY MR. DINH:
Q The first E-mail.
A JY 0009?
Q Yes.
With respect to the next to the last paragraph of that E-mail, the one that begins with "despite," can you describe -- can you just read the first sentence of that E-mail for us.
A "Despite what I personally believe to be the clear intent of the language of the June 17, 1993 directive, Ken Donahue of D.C. investigations took the position that he helped draft the directive and he 'knew' that no one intended that PLS (criminal coordinators) review all referrals before they are sent to DOJ."
Q What was --
MR. KRAVITZ: Are you going to let her read the whole paragraph?
MR. DINH: The first sentence.
BY MR. DINH:
Q You can read the whole paragraph if you so

68

choose. Would you like to read the whole paragraph?
A I don't --
Q In the interest of time, I will return to it if it would clarify your answer.
What was the basis of your knowledge as to what Mr. Ken Donahue's feelings were about the directive? Did you talk to Mr. Donahue?
A Yes.
Q He said this to you, that he knew that no one intended that PLS review all referrals?
A Yes. He told me that.
Q Did he tell you -- what exactly was the intention of the June 17, 1993 directive as he understood it?
A I asked him that question, and he couldn't answer it.
Q What was his answer, if any?
A He shrugged his shoulders.
Q Did you ask him whether any criminal referrals were to be reviewed under his view of the June 17, 1993 directive?
A I don't recall asking him that in that

manner.
Q But this is a view that you disagreed with?
A My statement to Mr. Donahue then was then you failed miserably at your job. He told me he drafted it. I told him if that was his intent, then he failed miserably at his job.
Q Because?
A Because that is not what that document says to any fair-minded, intelligent person.
Q That document says that "except in rare circumstances" --
MR. WARIN: Well, the document speaks for itself. I think if you want to quote some language, Viet will be happy to look at it again.
BY MR. DINH:
Q Can you read that sentence to us, the one you read earlier as support for the legal review process.
A It is --
Q Let the record reflect the witness is now referring to TH 0704, which is the second page previously established June 17, 1993 directive.

A It is the same language that I quote in document JY 0009, where I quote from the June 17th directive. "Except in rare circumstances, criminal referrals shall be reviewed by RTC investigations and legal division criminal coordinators before they are delivered to the U.S. Attorney and the FBI or other investigative agencies."
Q What was your feeling as far as what the rare circumstances were? Have you had occasions to encounter such a rare circumstance?
A No, sir.
MR. WARIN: Just for the finishing of that paragraph, it says also "RTC criminal coordinator shall make certain that all required information and support documents are provided." And then it moves on, the document on page 2 moves to another header, paragraph numbered number 3.
BY MR. DINH:
Q By "document" he is referring to TH 0704, which is the June 17, 1994 directive.
As far as the actual procedures are concerned, did the June 17, 1993 directive establish

71

any particular manner in which the review was to be performed? That is, was it to be an oral review? Was it to be a written review of the work product? How was it to be communicated and those kinds of procedures, based on your understanding of the June 17, 1993 directive?

MR. KRAVITZ: Is your question whether the express language of the directive indicates how the review is to be conducted or what her understanding of the directive is?

MR. DINH: Both. First the express language.

THE WITNESS: My understanding is what it expressly says. It says a review. Based on my experience in my 16 years of practicing law, my understanding of a review is that you look at the allegations, see if there is evidence to support those allegations and is that evidence assembled and provided for the ultimate decisionmakers, which in this case was the U.S. Attorney's Office.

BY MR. DINH:

Q And you testified earlier that this was the

72

first criminal referral that you had -- that the Kansas City PLS section had conducted a legal review of? By "this," I mean the referrals relating to Madison Guaranty that you became aware of on September 24, 1993.

A It was by no means my first legal review. It was the first legal review that I was aware of issued out of the Kansas City office subsequent to the June 17 directive.

Q Did you tell Karen Carmichael and Phil Adams to put their review in a written work product at the end of their two weeks?

A I would -- I would not have to tell a lawyer that a review has to be in writing.

Q Is Mr. Dudine a lawyer, as far as you know?

A I don't know.

Q Mr. Dudine is one of the people to whom you sent the final work product upon its completion on October 8th?

A Yes, sir.

Q He was one of the persons who had authored the June 17, 1993 directive?

A Define what you mean by "authored."
Q He was one of the people who issued the --
A I don't know who wrote it. I just know the names of the people that it is issued by.
Q So, he was one of the people who issued the June 17, 1993 directive?
A Yes, sir.
Q Would it surprise you to learn that this was one of the few legal reviews of a criminal referral that he had seen that was written?
A Sir, no review has been done in my office that hasn't been in writing.
Q Let me direct your attention now to exhibit Bates stamped TH 0787. It is an E-mail from Karen Carmichael to JFY and PJA, which I take to be you and Mr. Phil Adams.
A Yes.
Q And it was forwarded by Julie Yanda to Carl Gamble with the comment "Carl, I want to make sure you are aware of this."
(Witness reviewed the document.)
MR. KRAVITZ: What is the number on that

one?
MR. DINH: TH 787.
BY MR. DINH:
Q Have you had a chance to study that E-mail?
A Yes, sir.
Q Can you read to us the last paragraph of that E-mail, please.
A The E-mail that Karen Carmichael wrote?
Q Yes.
A "The above addressee is not typical of our criminal referral transmittal letters. It is, however, the person to whom CR 0004 was sent sometime last year and with whom Ms. Lewis has had contact. As you will remember, the ethics program director is the subject of the phone call we received from Washington two weeks ago that began our review of the Madison referrals."
Q Do you know to what phone call Ms. Carmichael was referring in this E-mail?
A No, I don't.
Q Did you have any discussions with Ms. Carmichael prior to the initiation of the review

75

of the Madison referrals about any telephone calls she had with Washington, D.C. or DOJ -- with the Washington, D.C. main Justice department?

MR. DINH: The record reflects that the witness requested to confer with counsel.

(Witness conferred with counsel.)

MR. WARIN: Why don't we hear the question again, please.

(The reporter read the record as requested.)

MR. WARIN: So this would have been any time before September 24th-ish of 1993. Did you have any conversations with Ms. Carmichael regarding any conversations that Ms. Carmichael might have had with the Department of Justice in Washington?

MR. DINH: I think that's what the reporter read.

THE WITNESS: Nothing that I can recall.

BY MR. DINH:

Q So, as we sit here today, you do not know what conversation Ms. Carmichael was referring to at that time?

A No, sir, I don't.

76

Q Do you know who Donna Henneman is?

A No, I don't.

Q Did you take any actions that you can recall with respect to this E-mail that you received from Ms. Carmichael? Did you ask her who Donna Henneman was? Did you ask her who Donna Henneman was?

A No, sir. The only action I took was to send it on to the criminal coordinator for Washington PLS, Carl Gamble.

Q And you didn't ask her what phone call were you talking about in the E-mail?

A Sitting here today, I just don't recall any such conversation.

Q Was Ms. Carmichael involved with any other work in the fall of 1993 relating to Madison Guaranty that you are aware of?

A Oh, yes, she was.

Q And what other work was that?

A The grand jury subpoenas that we were receiving from the Little Rock DOJ office.

Q What precisely did the subpoenas request?

77

A Sir, there were a number of them. I don't know without seeing them.
Q Did one of them request all records relating to Madison Guaranty Savings & Loan Association?
MR. KRAVITZ: I think she just said she doesn't know without seeing the subpoenas.
BY MR. DINH:
Q Do you have any recollection that one of them called for all records relating to Madison Guaranty Savings & Loan Association?
A There were a number of subpoenas, and they asked for an enormous amount of documents. I just don't recall one with that exact language.
Q Were they all asking for the same records, the number of subpoenas to which you were referring to, or were they asking for different records?
A It was all over the waterfront.
Q Did you have any discussions within the PLS section as to the broad scope of the subpoenas that you received?
A Yes, we did.

78

Q What actions did you take, if any, in response to the broad scope of the subpoenas?
A At what point in time?
Q When you received them in the fall of 1993.
A Mr. Adams was responsible for coordinating those responses on the criminal subpoenas, he along with Karen Carmichael. Because of his federal prosecutorial experience, he took the lead in the majority of the dealings with regard to this.
Q Did you discuss with him about the broad scope of the subpoenas? Did he discuss with you?
A Mr. Adams expressed his concern several times about what he characterized as the overbreadth of those subpoenas.
Q Did he respond to these subpoenas that he thought were overbroad in any way or did he simply register an objection as to their scope and not produce any documents?
MR. WARIN: Do you know what he did -- maybe that's the better question -- in response to these subpoenas?

THE WITNESS: I know he reported to me that he talked to the AUSA.

BY MR. DINH:

Q What was the result of these discussions with the AUSA?

A There are so many subpoenas, sir, I am sorry, as regards to what happened in conjunction with each separate subpoena, I can't answer it today. I just don't know.

Q Did there come a time when you became aware of any concern that the U.S. Attorney's Office was having with respect to the RTC's response to these subpoenas?

A Yes. I became aware of that.

Q Do you know approximately when that was, the date?

A Not the date, no, I don't.

Q Was it in October of 1993?

MR. WARIN: She doesn't know.

THE WITNESS: I'm sorry; I don't know.

MR. DINH: Just for the record, I was asking for the date in the prior question. I was

asking for the month in the latter question, I think. The witness cannot know the date without knowing the exact month -- can know the month without knowing the exact date. I think I was having the same mistake speaking as you were listening.

MR. WARIN: I think I clearly heard.

BY MR. DINH:

Q Let me refer you now to TH 833. It is an E-mail from Karen Carmichael addressed to Carl Gamble, Julie Yanda, B.J. Hickert and Phil Adams dated November 5, 1993.

(Witness examined the document.)

Can you tell me the circumstances surrounding -- strike that.

Ms. Karen Carmichael was involved in document production in response to the subpoena request; correct?

A Yes, in her role as criminal coordinator.

Q Did there come a time when she was moved from that role, not with respect to her overall role as criminal coordinator but with respect to her role in coordinating the production of documents in

response to the U.S. Attorney's subpoena?
A Her role as the criminal coordinator in all facets related to Madison came to an end.
Q Do you know approximately when that was?
A Yes. In November of 1993.
Q Can you describe to me the circumstances leading up to that change of role.
A In November of 1993, I asked for a meeting with Mr. Iorio. Mr. Iorio and I met. I explained that the referrals were out the door now, they were in the hands of the people who would ultimately make the decisions and that I had some concerns that I wanted to discuss with Mr. Iorio, and we got together.
Q You initiated the meeting between yourself and Mr. Iorio?
A Yes, sir, I did.
Q What was the discussion in this meeting?
A At that meeting, I laid out for Mr. Iorio a series of events that had troubled me greatly concerning Ms. Lewis and her failure to act as a team member and work with the legal division in concert to

try to move matters along successfully to the benefit of the RTC.
Q Did Mr. Iorio express any similar concerns or displeasure with respect to Ms. Carmichael?
A His only characterization that I recall was that he deemed it to be a, quote, personality conflict between the two, and in exchange for my request that Ms. Lewis be removed from the Madison investigation, Mr. Iorio asked me in turn to remove Ms. Carmichael. I agreed, and so she was removed.
Q Did you initiate the meeting with the intent of asking Mr. Iorio to remove Ms. Lewis from the case?
A Yes, I did.
Q Did you have any discussions with anybody prior to your initiation of that meeting with respect to the decision to request that Ms. Lewis be removed from the case?
A Specifically about requesting Ms. Lewis to be removed?
Q Yes.
A I did not discuss that decision I had made

83

with anyone.
Q Did you have any discussions with anyone about your upcoming meeting with Mr. Iorio?
A Yes.
Q With whom did you discuss?
A Neysa Day.
Q What was the substance of -- actually, strike that. Who is Neysa Day?
A Neysa Day was a senior attorney in the professional liability section of the Kansas City office.
Q What was the substance of that discussion?
A Ms. Day was a line attorney who had been assigned responsibility for an institution known as Paragould. And Ms. Lewis had been the investigator assigned to the Paragould institution. In the Paragould institution, there were a series of claims that were being developed, including a fidelity bond claim.
Again, I ask you to recall that my specific experience relates to fidelity bond claims and D&O liability claims, particularly on the defense side.

84

So I have extraordinary background in analyzing the merits of liability causation issues, if you will, relating to fidelity bond claims. There was a fidelity bond claim in Paragould that related to the activities of certain former employees at Paragould.
Ms. Day had been the line attorney, and she had expressed on numerous occasions her concern and disappointment, if you will, about Ms. Lewis's failure and refusal to cooperate with Ms. Day in the pursuit of the fidelity bond claim and instead directing her efforts solely towards the criminal prosecution side of it.
Q The fidelity bond claims are civil claims?
A Yes, sir, in this context.
Q You approached Ms. Day about this?
A Yes, to refresh my memory, so that when I talked to Mr. Iorio about the specifics of my concerns relating to Paragould, my memory would be refreshed and I could speak authoritatively about the facts and circumstances that evolved into my concern over Ms. Lewis's performance.
Q By "performance," you included in that her

85

preference for the criminal matters rather than the work on the civil claims with respect to Paragould?
A I didn't say "preference."
Q Her allocation of time, then?
MR. WARIN: I don't think that is her testimony.
THE WITNESS: In Paragould, Ms. Lewis took it upon herself to be the sole contact with the U.S. Attorney's Office who was prosecuting the criminal side of the Paragould matters with these particular defendants.
The U.S. Attorney's Office -- first of all, Ms. Lewis did not tell PLS or Neysa Day about the criminal referral she had made. These criminal referrals directly related to the facts and circumstances surrounding the fidelity bond claim. Again, it gets back to fidelity bond claims oftentimes are subsumed in criminal law issues and allegations.
BY MR. DINH:
Q Do you know approximately when these criminal referrals were made with respect to

86

Paragould?
A I believe they were in 1991.
Q Before the June 17, 1993 directive?
A Yes.
Q Okay. You can continue with your discussion of Paragould. You were going to continue with your discussion before I interrupted you. I'm sorry.
A Can you --
MR. WARIN: Let's not. Let him ask questions.
MR. DINH: I will continue then.
MR. WARIN: It is garbled now. Let's clean it up if it needs to be cleaned up.
BY MR. DINH:
Q So, you were talking with Ms. Neysa Day with respect to the 1991 Paragould case.
A The criminal referrals were in 1991. The fidelity bond claim developed and matured in 1992 and -- I'm getting my years confused. It was sometime after the criminal referrals.
Q And what did you tell Ms. Day with respect

87

to your upcoming meeting with Mr. Iorio? Did you tell her you were intending to meet with Mr. Iorio?
A Yes.
Q Did you tell her the object of your meeting was about Jean Lewis?
A She certainly knew that I -- I told her I was going to discuss Jean Lewis. I do not recall ever telling her that I was going to request Ms. Lewis's removal.
Q Did you feel that the removal of Karen Carmichael from all matters involving Madison Guaranty was warranted?
A It was a nonissue to me. The referrals were out the door.
Q Right. At the time in November of 1993, when Mr. Iorio requested that you remove Ms. Carmichael from all matters involving Madison Guaranty, did you feel that request was warranted?
A It didn't make any difference to me. It was a nonissue. Karen's role as criminal coordinator was at an end. But if that would make Mr. Iorio happy, I always tried to meet him halfway, and I did

88

so.
Q As criminal coordinator, did she also have substantive authority or responsibility with respect to the production of documents in response to subpoenas from the U.S. Attorney?
A Yes, she did.
Q And at the time in November of 1993, were those responsibilities or authorities fully complied with, fully discharged?
MR. WARIN: Had she completed them? Do you know? If you don't know --
THE WITNESS: I don't know.
BY MR. DINH:
Q Do you know if you were still continuing, you or Mr. --
(Witness conferred with counsel.)
MR. DINH: The record will reflect that the witness conferred with counsel.
BY MR. DINH:
Q At the time of your decision to remove Ms. Carmichael from all matters involving Madison --
MR. WARIN: I think that characterization

89

sounds like -- it sounds like this is a bureaucratic tit for tat. I don't think you are communicating that in your question. It sounds like she had some concerns about Ms. Lewis. Apparently Mr. Iorio had some concerns about Ms. Carmichael.

MR. DINH: I make no characterization.

MR. WARIN: Your last question said "at the time you removed Ms. Carmichael."

BY MR. DINH:

Q At the time you removed Ms. Carmichael from all matters involving Madison Guaranty at the request of Mr. Iorio, were the production of documents to the Department of Justice in response to their subpoenas relating to Madison Guaranty Savings & Loan Association completed?

A I don't know.

Q Do you supervise the production of documents at all with respect to these subpoenas?

A No. That is why I brought Phil Adams in, because of his federal prosecutorial experience.

Q You delegated that authority to him and he doesn't report to you with respect to ongoing matters

90

or pending subpoenas?

A That's not a fair characterization of what I said.

Q Does he report to you?

A Yes, he does.

Q By -- did he report to you with respect to his response to the DOJ subpoenas or the U.S. Attorney's Office subpoenas with respect to Madison Guaranty Savings & Loan Association?

A He certainly kept me apprised of the progress, yes.

Q So, I ask you again. At the time that you removed Ms. Carmichael from all matters relating to Madison Guaranty Savings & Loan Association, did you have any knowledge from Mr. Phil Adams's reporting or from Ms. Carmichael's reporting with respect to whether that production of documents was completed?

MR. KRAVITZ: I have an objection to that question, because it may be that the answer is no, but I still think that the question is confusing because I think the record is clear that although there may have been subpoenas pending at that time in

91

November 1993, there have been subsequent subpoenas for documents issued to the RTC, both from the U.S. Attorney's Office and from Special Counsel and Independent Counsel and in fact from main Justice when they were running the investigation for a time.

Even if as of November '93 all subpoenas that had already been served had been complied with fully, there have still been subsequent subpoenas. The whole question is very confusing.

BY MR. DINH:

Q You can answer the question.

A I don't know.

Q We started this out -- before we got off on this side track, we started out talking about the complaint that you had heard from the Department of Justice with respect to the speed of production of documents in response to these subpoenas.

A Yes. Karen told me about that.

Q Are those -- is that the first time you learned about those concerns, when Karen Carmichael told you?

A That's the only time I learned of those

92

concerns.

Q Are those the same concerns that she mentioned in the second full paragraph of her November 5th, 1993 E-mail to which we had referred to earlier, TH 0833? Can you read that sentence for us?

A I will read it. It reads "RTC legal has been accused by Washington Department of Justice of being 'uncooperative' and 'nonresponsive'" -- those two words are in quotes -- "to their investigation and" -- I assume it is --

MR. WARIN: It looks like "request," but it has not been Xeroxed properly.

THE WITNESS: "For documentation regarding Madison Guaranty, Little Rock, Arkansas."

BY MR. DINH:

Q You say that was the only time you became aware of any objections from the Department of Justice with respect to the speed and the progress of the production of documents in response to their subpoenas?

A There was one other time where the issue was brought up, but I cannot tell you whether it was

93

main Justice, Washington Justice; they are all the same to me.
Q What other time was the issue brought up?
A At the meeting with Ken Donahue, the AUSAs, the FBI, Mr. Iorio, Mr. Adams and myself.
Q Do you know what brought about this meeting?
A No, I do not.
Q Do you know who requested the meeting?
A No, I do not.
Q Who requested that you attend the meeting?
A I don't know.
Q Did you recall the substance of this meeting?
A Yes.
Q Can you tell me what that substance is?
A It related to the coordinating of the agency efforts related to the Madison Guaranty investigation.
Q And at this time, did any Justice Department officials raise any concerns with respect to the speed and the progress of production of

94

documents in response to their subpoenas relating to Madison Guaranty Savings & Loan Association? By Justice Department, I will just for the time being lump them all in, AUSAs, U.S. Attorneys, main Justice.
A The FBI did.
Q The FBI did?
A Yes.
Q And what was your response -- I mean by "your," RTC's response -- to these complaints?
MR. WARIN: If she knows.
THE WITNESS: The complaint did not ask for a response, so I did not provide one.
MR. WARIN: Was it more of a process meeting than a complaint meeting?
THE WITNESS: Yes. It was to bring the agencies' efforts and coordinate them together, to try to make them more efficient in response to the investigative work on the Madison referrals.
BY MR. DINH:
Q This was not prompted by any problems the Department of Justice or the FBI had that you knew

95

of?
MR. WARIN: She testified she didn't know.
THE WITNESS: I don't know.
BY MR. DINH:
Q You said Ken Donahue was there?
A Yes, sir.
Q Do you remember what Mr. Donahue's statements or discussions in this meeting were generally about the process of production of documents?
A During that meeting, no.
Q Did you subsequently revise your procedure for producing documents after that meeting?
A Yes, sir, I did.
Q In response to that meeting?
A At the meeting I was requested to find some way to minimize -- at the request of the FBI, to minimize the number of people who would have access to or knowledge of the various subpoenas that were coming into the Kansas City office.
Q The FBI requested you to do this?
A That's my recollection, yes.

96

Q Let me refer you to Exhibit TH 889, a memorandum from Julie Yanda to a number of people. I ask you to study that.
(Witness examined the document.)
Are these the new procedures that you instituted with respect to -- or you proposed with respect to the production of documents in response to the subpoenas?
A Yes, triggered by the FBI's request during the meeting.
Q The first sentence of this E-mail says that "at Ken Donahue's directive and request for expediting the process." Does that refresh your memory with respect to who made the request?
A We are talking about apples and oranges here. Your question to me was at the meeting. At the meeting with the FBI it was the FBI agent who made that request of me, explaining his concerns about security and keeping this stuff under wraps.
A meeting following that involved simply Mr. Donahue, Mr. Iorio, Mr. Adams and myself. At that meeting, Mr. Donahue and I discussed ways that

97

we could develop procedures that would minimize the number of people involved.
Q Who is Mr. Donahue?
A He is with the Washington investigative unit. I don't know his title.
Q When Karen Carmichael told you that she had heard complaints with respect to the production of documents from the Justice Department or from the U.S. Attorney's Office, what steps, if any, did you take in response to that information?
A I do what I have done throughout my practice. Whenever an accusation is made about missteps or misdeeds in the performance of duties, I told her to start documenting what she did and prepare a chronology of what she did, when she did it and why she did it.
Q Did she subsequently prepare that chronology?
A Yes.
Q Did she submit that chronology to you?
A I got a copy of it, but it went directly to Washington.

98

Q It went directly to Washington?
A That's my recollection.
Q Whom did she address that to, do you know?
A I'm sorry, I don't recall.
Q What steps, if any, did Washington take, to the best of your knowledge, in response to that chronology?
MR. WARIN: If you know. If you know what Washington did in response to Ms. Carmichael's chronology.
THE WITNESS: I don't know.
BY MR. DINH:
Q Did you make any attempt to contact the persons who Ms. Carmichael told you had made the complaints to her respecting the speed and progress of the production of documents?
A No, sir.
Q The only steps you took with respect to that was to tell her to chronologize it and send it off to Washington?
A To act responsibly and as a lawyer should act, yes, and that is to prepare and document what

happened.
Q And this was approximately November 5, 1993 when she sent you this E-mail that we had talked about earlier?
A He is referring to Exhibit TH 0833.
(Witness examined the document.)
Yes, sir, that's the date of her E-mail.
Q Those are the accusations on the second line there with respect to the Justice Department's complaints?
A Yes. I earlier read the second paragraph of this document.
Q Did she talk to you before she -- was this the first you heard of this complaint in this E-mail or had she had prior discussions with you respecting these complaints?
A As I said earlier, she had told me about the complaints that had been registered, and I gave her the advice and counsel that I just described for you earlier.
Q And this is part of the documentation that upon your advice she made?

A I do not believe that you have the attachment to this E-mail attached to this document. There is a reference to a document AUSA.GJS that I do not believe is attached to your Exhibit TH 0833.
Q But that attachment is the documentation that you believe Ms. Carmichael prepared?
A Yes. Ms. Carmichael prepared it.
Q After the new procedures which you proposed -- oh, these new procedures that you proposed after the November 22, 1994 meeting, were they instituted? Were they agreed to and instituted?
A What meeting? I'm sorry. What meeting on November 22nd?
Q The meeting with the Justice Department and the subsequent meeting with Richard Iorio and Ken Donahue and Lee Ausen.
A I don't recall the date.
MR. KRAVITZ: I think you said November 22nd, 1994.
MR. DINH: I meant in November of 1993.
MR. WARIN: The question is, were these something -- I don't think you finished your

question, but it sounds like the question he was going to ask you was were these procedures implemented after that meeting.

THE WITNESS: The procedures outlined in the E-mail?

BY MR. DINH:

Q Right. Let me get that for you.

MR. KRAVITZ: TH 0889 is the E-mail that has the procedures outlined.

THE WITNESS: Yes, sir. To the best of my knowledge and belief, they were implemented.

BY MR. DINH:

Q Have there been any more complaints from the Justice Department or from the U.S. Attorney's Office with respect to the production of documents in response to their subpoenas that you are aware of?

MR. KRAVITZ: In this case or in any case?

MR. DINH: In this case.

THE WITNESS: None that I'm personally aware of.

MR. KRAVITZ: I have yet -- can we talk about scheduling for a minute? I'm concerned --

MR. DINH: If you want to go off the record, sure.

MR. KRAVITZ: I would rather stay on the record. I am concerned because counsel for Ms. Yanda has indicated, at least someone on their side needs to leave at 6:00. We have now been going from 2:30 until 4:45 and I haven't had a chance to ask a question yet.

I will remind you, as I told you earlier off the record, that Ms. Yanda is here because of the Democratic staff's request. So I think it would be grossly unfair if we didn't have a significant opportunity to ask Ms. Yanda some questions.

MR. DINH: As I understand it, the request was jointly made by both Majority and Minority counsel, and as the resolution sets out, Majority counsel, Majority staff will question the witness first.

I have some more questions. I do not anticipate them to be taking a significant amount of time, but I cannot give you a definite guarantee with respect to how much time I will have to take to do

that.
MR. KRAVITZ: Why don't we go off the record.
(Discussion off the record.)
BY MR. DINH:
Q Do you know who Ms. Jean Lewis is?
A Do I know her?
Q Yes.
A I have known her by a couple of names, but yes, Ms. Lewis is an investigator in the Kansas City office.
Q Do you know who -- you have testified that Richard Iorio is the head of the investigations unit?
A In the Kansas City office, yes.
Q Do you know who Lee Ausen is?
A Yes.
Q Is Lee Ausen Ms. Lewis's supervisor in the office?
A Her immediate supervisor.
Q Then he reports to Mr. Iorio?
A At what point in time?
Q In 1993 and 1994.

A At some point in time, a man by the name of Pat Robison was made the department head. Technically on an organization chart, Mr. Ausen would report to Mr. Robison who would report to Mr. Iorio.
Q Do you know when that reporting relationship ended approximately, the one with Mr. Robison in the chain?
A No, sir, I don't.
Q Did you come to know of any administrative actions taken against Mr. Ausen, Mr. Iorio and Ms. Lewis in 1994?
A Yes, sir, I did.
Q Do you know approximately when that was?
A In August of 1994.
Q Do you know who made the decision to take this administrative action against the three?
A No, sir, I don't.
Q Do you know what administrative action was taken against the three?
A Yes, sir.
Q Can you describe that to us.
A They were placed on administrative leave

105

for two weeks.
Q Do you know if they were permitted to be in their offices at the time?
A No, sir, I don't.
Q And they came back to work after those two weeks?
A Yes, sir, they did.
Q Did they continue working for the RTC uninterrupted until their termination, if any, with the RTC? Were there any subsequent administrative actions taken against them?
MR. WARIN: If you know.
THE WITNESS: None that I know of.
BY MR. DINH:
Q Did you have any discussions with anyone prior to their being placed on administrative leave about the subject of their being placed on administrative leave?
A Yes, sir.
Q With whom did you have those discussions?
A Mr. Tom Hindes.
Q Did he approach you about these subjects or

106

did you initiate the conversation?
A Specifically about the admin leave issue?
Q Yes.
A Specifically about the fact that they were going to be placed on admin leave?
Q Yes.
A Mr. Hindes called me and told me that the decision had been made to place them on administrative leave.
Q Did he tell you who had made this decision?
A I don't recall.
Q Did you have prior conversations with Mr. Hindes with respect to the issues underlying the administrative leave?
A I don't know the basis for the decision to put them on admin leave, but I certainly had conversations with Mr. Hindes.
Q About the three investigators?
A Yes. I was desperately concerned about the lack of productivity out of that office and what I believed to be the declining morale and destructive work environment that I witnessed in that office.

107

Q You believed that the destructive -- you believed that the work conditions was a result of actions by these three investigators?
A I believed it to be part and parcel, yes.
Q Was this in the context of a formal complaint made to Mr. Hindes or was this communicated informally to him?
A Through a series of phone calls.
Q Do you recall approximately when these phone calls took place?
A Just periodically throughout 1994.
Q Throughout 1994.
You said you did not know the basis for which they were placed on administrative leave. Mr. Hindes did not tell that to you in his phone call notifying you that they would be placed on administrative leave?
A That's right. He told me the fact that they were.
Q You have subsequently not come to any knowledge with respect to the bases for their being placed on administrative leave?

108

A No.
Q You have never seen the allegations, any written allegations or charges against the three investigators?
A By whom?
Q By Tom Hindes or anybody else who may have made those allegations or justified their placement on administrative leave.
MR. WARIN: She testified she hadn't seen --
MR. DINH: She has no basis. I want to make sure I covered everything.
THE WITNESS: No, sir, I haven't.
BY MR. DINH:
Q Did you suggest that they be placed on administrative leave when you talked to Mr. Hindes with respect to these concerns that you had?
A No, sir.
Q What actions, if any, did you recommend to Mr. Hindes in order to rectify the concerns you had with respect to the morale of the investigations unit?

A I made no recommendations.
Q You simply made him aware of the fact that you had these concerns?
A I reached a point where I could not continue to do my job effectively or efficiently or constructively given the environment that I was forced to deal with as a result of the activities of the Kansas City Investigations office. So I called Mr. Hindes and I gave him an ultimatum. I said he had to choose between Mr. Iorio or me.
Q Did you threaten to resign if Mr. Iorio was not removed? Was that the import of the ultimatum?
A It wasn't a threat. I was telling him I was resigning unless something was done to correct the problem in Kansas City investigations.
Q Let me go back to the underlying problem as you perceived it at the time. You said there were problems with morale.
A Absolutely.
Q And this was a product of whose actions specifically?
A It was the obsession that had come to

envelop the entire Kansas City investigative office. The focus of all energies, experience and time was being obsessed with Madison.
Q And that was the principal -- was that the only basis for your complaint with respect to the morale of the Kansas City investigations unit?
MR. WARIN: I think she previously testified that there was a complete lack of productivity.
BY MR. DINH:
Q Right, a complete lack of productivity arising out of this complete obsession, I take it.
A The number of activities that were enveloped as a result of this obsession with Madison, yes.
Q With the investigative unit's conduct with respect to the Madison case?
A Most quantifiable in the lack of productivity.
Q Did you express these concerns to anybody else besides Mr. Hindes?
A Yes. Mr. Eisenstein.

111

Q To whom you reported on administrative matters in the Washington, D.C. office?
A Yes. On substantive matters I reported.
Q I meant substantive matters. I misspoke. Did you talk to Ms. April Breslaw about these concerns?
A Not that I recall.
Q But she was the attorney in Washington principally then and now responsible for the conduct of the Madison Guaranty case?
MR. KRAVITZ: Did you say then and now?
BY MR. DINH:
Q She said then at all times and subsequent. Was that your testimony?
MR. WARIN: No. She never testified to that.
MR. KRAVITZ: That is not accurate.
THE WITNESS: I don't think April was responsible for it today. When her responsibility ceased, I don't know.
MR. WARIN: The question was did you talk to her or not, yes or no.

112

THE WITNESS: I don't recall ever talking to her about it.
MR. WARIN: There were some faulty premises there in that question, too, on top of it, Julie. So you have corrected the premises and the substantive answer is she didn't recall talking to her.
THE WITNESS: You understand April wasn't my supervisor in any way, shape or form.
MR. DINH: Uh-huh.
BY MR. DINH:
Q But at the time was she involved in the Madison Guaranty case still?
MR. KRAVITZ: At what time?
BY MR. DINH:
Q At the time you had these concerns with respect to the RTC investigations unit.
A Sir, I don't know when her responsibility for Madison ended.
Q Do you think the attention given by the investigations unit -- and I know it is probably incorporated in your prior answers, but I want to make this clear. Do you think that the attention

113

given by the investigations unit from the RTC Kansas City office to the Madison Guaranty case was unduly excessive?

A I don't know about the characterization. I knew the impact that it had. That impact made it impossible for me to do my job as I believe it has to be done in order to do it effectively and responsibly on behalf of my client, the RTC.

Q So you don't know whether -- by not knowing the characterization, you are saying you do not know whether it was unduly excessive or not? I mean, I don't know what she means by the characterization.

MR. KRAVITZ: You are the one who used it.

MR. WARIN: "Unduly excessive" suggests some sort of relative standard.

BY MR. DINH:

Q Is "unduly excessive" the characterization to which you were referring to in your answer?

A Yes, sir.

Q That's all I was trying to get at.

Let me ask you now to study JY 0110. It is an E-mail message originally dated July 28, 1994 at

114

10:03:11 and subsequently forwarded with comments to a number of people. The E-mail was from Richard Iorio to James Dudine, Jane Jankowski. The Bates number is JY 0110.

(Witness examined the document.)

Have you had a chance to study that?

A Yes, sir.

Q In that, Mr. Iorio referenced a document that was supposedly prepared by you addressed to Tom Hindes with a carbon copy to Jim Dudine that he had heard about through various contacts that in substance "was very critical of my management of the Kansas City office of investigation."

Did you author such a memorandum?

A Absolutely not.

Q Do you have any knowledge as to any memorandum authored by any member of your staff on that subject?

A There is no such document to my knowledge.

Q So, your complaints to Mr. Hindes were strictly telephonic, then? They were not written down, the expressions of concern?

115

MR. WARIN: He is referring to your earlier testimony that in 1994 you expressed concerns about the productivity and other issues of morale in the investigative units in Kansas City.

THE WITNESS: I don't recall putting anything like that in writing.

BY MR. DINH:

Q Why not? Why didn't you put anything like that in writing?

A Because I talk to people, to Mr. Hindes.

Q But you testified earlier that you had advised Ms. Carmichael and you seemed to be very careful and memorialized the events when serious allegations like these are made and you strike me as a very careful person.

Did it not occur to you to put these serious allegations of concern in writing to Mr. Hindes instead of just communicating to him telephonically?

MR. WARIN: I will object to the characterization. That is not her words. If you are trying to read back the "serious allegations" words,

116

that wasn't her words.

MR. DINH: That's why I corrected my myself. The expressions of concern.

THE WITNESS: First of all, no one was accusing me of wrongdoing through these conversations I was having with Tom Hindes. So my advice to Karen -- so that your question is not taken out of context, I advised Karen to take those steps because she had been accused of not doing her job properly.

On the other hand, I am talking to my boss and telling my boss that I am not able to do my job, and I talked to him on periodic occasions to let him know that my ability to do my job was being hampered and impeded by what I saw developing in the Kansas City Investigations office.

BY MR. DINH:

Q Did you communicate these concerns to Mr. Iorio, Mr. Ausen or Ms. Lewis directly?

A Not to Ms. Lewis or to Mr. Ausen. But I did talk to Mr. Iorio on several occasions about these very types of concerns.

Q Did you tell him that you had also talked

117

to Mr. Hindes regarding these concerns?
A No.
Q Now, Mr. Iorio was subsequently reinstated after this two-week period of administrative leave; correct?
A Yes, sir.
Q Do you remember approximately what the date was that he was reinstated on?
A No, sir, I don't know the date.
Q It was two weeks from whenever he was placed on admin leave?
A That's right. He came back to work.
Q Did you resign after Mr. Iorio came back?
A No, sir.
Q Why was that? Did the work situation improve?
A Absolutely not.
Q It persisted as it was before he was placed on administrative leave?
A I had given my boss an ultimatum. Mr. Iorio had been placed on admin leave and he had come back. If ever that office needed me to lead it

118

through one of the most difficult and challenging times that we had faced, and we have faced a number there, I felt it was incumbent and professionally responsible -- the only professionally responsible thing I could do was to stay and see it through. I care very deeply about those cases, and I wanted to make sure that the focus of that office was constructive and productive.
Q So, you stayed on even though the situation did not improve after Mr. Iorio left because you care about the cases?
A That's not a fair characterization of what I said. I do care about the cases. But I felt a responsibility, a professional responsibility, the same responsibility that I feel and have felt to each of my clients in my 16 years of practice to see a project through, particularly when it is at a very difficult time, and that's what we were experiencing when they came back from admin leave.
Q Did you have any conversations with Erica Cooper prior to them being placed on administrative leave about them being placed on administrative

leave?
A I don't recall any such conversation.
Q Ellen Kulka?
A No, sir.
Q Do you know who Randi Mendelsohn is?
A Yes.
Q Who is she and what is her relationship or activities with respect to the administrative leave issue?
A She works in Washington personnel. She was one of the investigators that came out to investigate the admin leave issues.
Q Did she interview you?
A Yes.
Q She was an investigator investigating the allegations that underlied the administrative leave?
A I don't know if she is an investigator, but she was with the personnel office.
Q Let me refer you to an E-mail from Randi Mendelsohn to Julie Yanda, Duane Curtis, Michael Van Vulkenburg and Thomas J. Sarisky dated September 12, 1994. The Bates number is TS 408.

(Witness examined the document.)
MR. WARIN: Is there a question?
MR. DINH: I'm letting her study the document.
THE WITNESS: Yes, sir.
BY MR. DINH:
Q Did you consider Mrs. Randi Mendelsohn to be an objective investigator?
MR. WARIN: She has previously testified she didn't know she was an investigator.
BY MR. DINH:
Q Or an objective person looking into the allegations?
A I don't know. Washington sent her down and I talked to her because it was what I was asked to do.
Q Can you read for me the last two sentences of the third paragraph up.
A "And we are fortunate to have Ellen Kulka and Erica Cooper backing us. I am happy to enlist their support and help whenever needed."
Q Can you read the prior sentence to those

121

two sentences.
MR. WARIN: Why don't we do this. Why don't we read the whole paragraph. "Please let me know how you are managing and if all is slowly settling down, at least to a manageable point. How is the staff in investigations holding up? As Tom and I said, we continue to be here for you and to 'fight' to do what is right in whatever way we can." And then the two sentences previously were read by my client start "and we are fortunate to have Ellen Kulka and Erica Cooper backing us. I am happy to enlist their support and help if ever needed."
BY MR. DINH:
Q Do you know what she referred to when she was saying "to 'fight' to do what is right in whatever way we can"?
A No, sir, I don't.
Q Have you had any subsequent discussions with Ms. Mendelsohn regarding this E-mail?
MR. WARIN: After September 12, 1994, have you had any conversations with Ms. Mendelsohn regarding her E-mail?

122

THE WITNESS: I don't recall any.
BY MR. DINH:
Q Did you have any conversations with Ms. Mendelsohn after September 12 with respect to the administrative leave issue?
A None that I recall, sir.
Q Let me refer you now to Bates exhibit -- exhibit Bates stamped TH 726. It is an E-mail from Julie Yanda to April Breslaw dated July 20, 1993.
MR. KRAVITZ: July 20, 1993?
MR. DINH: Yes.
MR. KRAVITZ: Fateful day. It is the day of Mr. Foster's suicide.
MR. DINH: Off the record.
(Discussion off the record.)
BY MR. DINH:
Q Can you read the E-mail for the record, please.
A "Thanks for the offer. Just so you will understand, I am not the one behind this. JT has directed me to make sure we are ready when and if the criminal referrals generate additional inquiries on

123

the civil side. I need whatever you have in storage. Please, please understand I am not pushing the ship. I am really sorry about having to bother you with this. I just don't know where else to turn. Thanks. Let me know if I can do anything to take the burden of securing these files off your shoulders."

Q And do you know to what offer you were referring to in this E-mail?

A No.

Q Let me refer you to TH 723. It is a memorandum or an E-mail from Julie Yanda to Ann Orr, cc to Philip Adams dated Wednesday, July 21, 1993.

(Witness examined the document.)

Can you read that for the record, please?

A "Ann, I need you to locate a memo from April Breslaw (w/D.C. PLS) to JT re: Madison Guaranty. It is dated 9/8/92. I need this ASAP."

Q Do you know whether that attempt to get this memo was part of the same effort to collect all the documents to which you were referring to in the early E-mail dated July 21, 1993?

124

A No, I don't know.

Q Actually, one relevant piece of information that we omitted from the record earlier. I refer you back to TH 726, the July 20, 1993 memorandum.

A Yes, sir.

Q Can you read the subject line of that E-mail?

A "Re: Madison."

Q Do you recall making any such efforts to retrieve files for Mr. Thompson relating to Madison Guaranty?

A Yes, sir.

Q So, you recall the circumstances surrounding this E-mail?

MR. WARIN: She has previously testified about this.

THE WITNESS: Yes.

BY MR. DINH:

Q Why did you feel the need to tell Ms. Breslaw that you are not the one behind this?

A This was her case. I was stepping into her territory. This was her case. It had never been

125

assigned to my office. I had never been responsible for it.

Yet the vice president of our office had asked me to, as I explained earlier, work with the investigative units -- that's when I assigned Phil Adams -- to try to get together and see if we would be prepared in case the Madison referrals generated any additional inquiries.

Q So you were simply concerned about a turf war?

A Absolutely. Just as I would not want someone stepping in to work on one of my cases.

Q Would it suffice simply to explain that the vice president wanted to collect documents?

MR. WARIN: Indeed, the memo says that.

BY MR. DINH:

Q Does it not go on to say "please, please understand I am not" -- in caps -- "pushing this ship"?

A That's what it says.

Q Is that your normal way of expressing -- explaining why you are requesting documents from

126

Ms. Breslaw?

A I can't answer that.

Q Do you know who Andy Tomback is?

A Yes, sir.

Q Is he with the RTC?

A Yes, sir.

Q Do you know what his position with the RTC is?

A Deputy General Counsel.

Q Have you had any occasion to talk to him about Madison Savings & Loan Association?

A About anything related to it?

Q Uh-huh.

A I don't recall any such conversation sitting here today.

Q Just to close up on a few other loops, then. Were you aware of any awards or accolades that Ms. Lewis, Mr. Ausen or Mr. Iorio received with respect to their conduct of the Madison Guaranty case?

A You mean those that were generated by the press?

127

Q No. Actual awards by the RTC.
A Mr. Iorio gave some time-off awards to Ms. Lewis and the others who worked on Madison at some point in 1994. He did so in the absence of the vice president of our office.
Q Did you feel these awards were unjustified?
A I drew no conclusion about whether they were warranted or not. The procedure that he followed to get those awards to me was offensive.
Q That is, in the absence of a vice president?
A No. The vice president, Mr. Cavinaw, had told him that the awards -- that Mr. Cavinaw would not approve the awards. Mr. Iorio, after Mr. Cavinaw had been sent on an extensive detail out of Kansas City, went to the acting vice president and represented to the acting vice president that Mr. Cavinaw had already approved these awards.
Q He lied to the acting vice president?
A I'm not characterizing it. I'm telling you what I was told.

128

Q You have no firsthand knowledge of this conversation?
A I only know what Mr. Cavinaw told me.
Q Did Mr. Cavinaw subsequently tell the acting vice president that he had indeed not agreed to these awards?
A I know there were several conversations. I was not party to any of them.
Q Were these awards rescinded in any way?
A I don't know.
Q Other than your concerns expressed to Mr. Hindes, did you have any other discussions with anyone with respect to the decision to place Lee Ausen, Iorio and Lewis on administrative leave?
MR. WARIN: I think she has previously testified she didn't talk about placing them on administrative leave.
MR. DINH: I said the decision.
THE WITNESS: I worked with -- Mr. Curtis and I, Duane Curtis, who was the section chief of the Kansas City office. When the admin leave started, I was on vacation in St. Louis. But I did at some

129

point in time during the admin leave identify the fact that these three had been placed on admin leave to my staff.

BY MR. DINH:

Q During the admin leave, you mean during the two-week period they were placed on administrative leave?

A Yes. Once I found out they were on admin leave, I called into my office to make sure they knew.

Q You were not privy to the decision to place them on administrative leave at all?

MR. WARIN: She has testified to that.

THE WITNESS: No, sir.

BY MR. DINH:

Q You don't know who was behind the communication from Mr. Hindes that they had been placed on administrative leave?

A That's right.

Q Do you know of any discussions whether or not to extend that administrative leave beyond the two-week period?

130

A There were none with me.

Q Do you know of any other conversations among anyone having come to any subsequent knowledge with respect to any such discussions?

A I have never practiced employment law. I don't know what the options are. Certainly no one discussed them with me.

Q Have you ever had any discussions, meetings or contacts with Webster Hubbell?

A No, sir.

Q Have you heard of anybody within the PLS section in any office who have had any such meeting, contact or conversation with Webster Hubbell?

MR. KRAVITZ: On any subject or related to Madison?

MR. DINH: On any subject.

THE WITNESS: He worked on one of our cases.

BY MR. DINH:

Q While he was Associate Attorney General.

A Nothing I know of.

MR. DINH: That's it. Nothing further.

131

MR. KRAVITZ: Why don't we take a break.
(Recess.)
EXAMINATION
BY MR. KRAVITZ:
Q Ms. Yanda, I want to ask you some follow-up questions first about the June 17th, 1993 directive you have testified about previously. Actually, before I start asking you those questions, let me apologize in advance. I will be jumping around from subject area to subject area. My intention is to be as efficient as possible and to be as repetitive as little as possible.
When did you first learn about the June 17, 1993 policy directive that you have testified about?
A It was introduced to us as a training conference in New Orleans in the middle of June.
Q Middle of June 1993?
A Yes, sir.
Q Who attended -- what types of RTC officials attended the training conference in June 1993?
A It was PLS.
Q This was a PLS conference specifically?

132

A Yes.
Q Were there officials of various offices of investigations present at this conference or was it simply PLS?
A I don't recall anyone from investigations being there.
Q To your knowledge, were there PLS lawyers from regional RTC offices from all over the country present at this training conference in New Orleans?
A Yes. It was required for all PLS lawyers.
Q So all the lawyers from, for example, your office went to the training conference?
A Yes.
Q The entire legal staff?
A Everyone was there.
Q That was the case for all of the regional offices of the RTC?
A The entire legal staff as it concerns the attorneys.
Q What was the purpose of that training conference? Was it specifically focused on the June 17th directive? Was it a broader purpose?

133

A It was a training conference for PLS. So it covered a number of activities that relate to PLS work.
Q What were you told about the June 17th directive at the training conference in New Orleans?
A I don't recall.
Q Were you informed as to why RTC was making this policy change?
A I just don't recall anything about it.
Q Just in general, whether your understanding came from that training conference or elsewhere, do you have any understanding as to why it is that someone in the RTC thought it necessary to change the policy and to require PLS legal review of criminal referrals before the referrals were submitted to the Justice Department?
A I truly don't know what motivated the change in directive.
Q Are you aware that complaints had been received by RTC officials from FBI officials and Justice Department officials, specifically U.S. Attorney's Office lawyers, about the quality of

134

criminal referrals that had been submitted before the time that the PLS review was required?
A Yes, I was aware of that.
Q How did you become aware of those complaints?
A My first awareness of it was at an investigative training conference in Phoenix, Arizona in 1991, where the investigators at that conference -- I recall comments being made about the fact that U.S. Attorney's Offices were not acting on these referrals that were not -- excuse me -- that the U.S. Attorney's Office was not acting on these referrals that the investigators were making and they were frustrated.
Q The investigators were frustrated?
A Yes.
Q Were you aware that FBI and U.S. Attorney's Office officials had been complaining about the quality of the RTC investigators criminal referrals?
A Only through comments Karen Carmichael was telling me.
Q When did you hear those comments from

135

Ms. Carmichael?
A I don't know.
Q Was the training conference in New Orleans in mid-June 1993, was that before June 17th or was June 17th during the conference? Do you remember?
A I don't know.
Q Do you know if you got a copy of the policy directive at the conference?
A Yes, I did.
Q And that was the first time you had seen the policy directive?
A Yes, sir.
Q Do you know who else -- let me back up.
Is it fair to assume then that all of the PLS lawyers from the Kansas City office received copies of the June 17th policy directive while at the training conference in New Orleans?
A Yes, sir.
Q Do you know when anyone else in the Kansas City RTC field office, anyone outside PLS received copies of the June 17th, 1993 directive?
A I don't know when Lee Ausen received it,

136

but we know by his handwritten Post-it note that is on the front page of the June 17th directive where he refers to the fact he is going into training on the new directive. That's the only note -- that's the only awareness or evidence I have that others outside of PLS were made aware of that directive.
Q What is the Post-it note that you are referring to?
MR. WARIN: In the exhibit that earlier counsel showed our client, there was a second copy of the directive that had at the back a Post-it note. It was a copy of a Post-it note. That's what my client is referring to.
BY MR. KRAVITZ:
Q I'm going to show you a copy of the policy directive, the June 17, 1993 policy directive. Can you tell from this memo and from the list of addressees on the memo which people in the Kansas City field office of the RTC were intended to receive copies of the memorandum?
A Yes, I can.
Q Can you just, going addressee by addressee,

137

maybe interpret who that would apply to, indicate who that would apply to in the Kansas City field office?

A "All RTC investigations department heads (field sites)."

MR. WARIN: He wants you to identify whether that would be applicable to anybody in Kansas City.

THE WITNESS: Mr. Iorio, Mr. Van Vulkenburg and Mr. -- I don't know when Mr. Robison was made department head. It would either be to Mr. Robison and/or Mr. Ausen.

BY MR. KRAVITZ:

Q But it would certainly include Mr. Iorio?

A Yes.

Q The next set of addressees?

A That would pertain to the field office.

Q What does the next one say?

A "All investigation staff (Washington)".

Q That would not apply to Kansas City. Then the next one is?

A "All assistant general counsel (field sites)."

138

Q Would that apply to anyone in Kansas City?

A That would be Mr. Glion Curtis, or if he was in Washington, it would be Mr. David Swiss.

Q What is the next list?

A "All litigation, professional liability, and complex litigation section chiefs (field sites)."

Q Who would that include in Kansas City?

A The section chiefs for litigation would include Linda Markison, Rebecca Bennett, Mary Koffran and Russ Kaufman. And then I was the section chief for professional liability.

MR. WARIN: Was there a complex litigation section chief?

THE WITNESS: I have never even heard of that.

MR. WARIN: Okay. Move on to the next category.

THE WITNESS: "All litigation, professional liability and complex litigation attorneys (Washington)."

BY MR. KRAVITZ:

139

Q That would not apply to Kansas City?
A No, sir.
Q Just as a general matter, when the main office of the RTC in Washington sends memoranda like this June 17th policy directive out to the field offices, how are they sent? Are they sent through the mail? Are they faxed?
A There is no one procedure that they used.
Q Do you know -- you have already testified about your receipt of a copy of this directive at the conference in New Orleans. But do you know when copies of the June 17, 1993 policy directive arrived in the Kansas City field office directly from Washington?
A I don't know when it arrived. I only know the date of Mr. Ausen's Post-it stamp.
Q What is that date?
A That would be the only date I would have.
Q While Viet is looking for that, let me ask you a couple other questions.
Before June 17, 1993, had you ever participated in any discussions with any of the

140

members of the Office of Investigations in Kansas City about whether PLS lawyers should review criminal referrals before the referrals submission to the Department of Justice?
A I don't recall any such conversations.
Q And before June 17th, the practice had been that the Office of Investigations would simply provide PLS with a courtesy copy of referrals after the referrals had been submitted to the Justice Department?
A I don't know about your characterization, but I know that if we got a copy of the referral, it came after the referral was already in the hands of the Department of Justice.
Q So, when you learned about the June 17, 1993 policy directive, there was no question in your mind that this was a change in RTC policy regarding the handling of criminal referrals before their submission to the Justice Department; is that correct?
A Yes. It was a change in how we handled, processed referrals.

141

Q After June 17, 1993 and before the Madison -- the set of nine Madison referrals was prepared in September, late September 1993, was there any discussion between PLS lawyers and members of the office of investigation about how to implement the June 17th policy directive? In other words, did you talk to anyone, Mr. Iorio, Mr. Ausen, anyone else in investigations about the directive before the time that the Madison referrals came up?

A I did not have any such discussion with them.

Q And to your knowledge, there were no criminal referrals submitted to the Justice Department by the Office of Investigations between June 17, 1993 and the time that the Madison referrals were prepared?

A I was not aware of any.

MR. KRAVITZ: Have you found that?

MR. DINH: Let the record reflect the Majority staff is now Minority staff's paralegal, only in the spirit of bipartisanship.

MR. KRAVITZ: We appreciate that.

142

BY MR. KRAVITZ:

Q TH 0709 is the Bates stamp of the document I am showing you. I ask you if this is the copy of this July 17th memorandum that has the Post-it you were referring to.

A Yes, sir, it is.

Q When is that Post-it dated?

A 6/29/93.

Q What does that say?

A "Karen, looks like the new crim referral form will be introduced soon. As a matter of fact, I will be in an all-day training session today on how to use the form, Lee."

Q That would be Lee Ausen?

A I believe it is, yes.

Q You assume that Karen is Karen Carmichael?

A Yes.

Q When you -- you testified earlier that when you first became aware that the nine criminal referrals in the Madison case had been prepared, you spoke with Mr. Iorio about PLS reviewing those referrals; is that correct?

143

A Pursuant to the directive, yes, I did.
Q It is your testimony that Mr. Iorio told you that he knew nothing about the June 17, 1993 policy directive?
A That's right. He asked me to fax it to him, and I did.
Q What exactly did Mr. Iorio tell you? Did he say he had never seen the policy directive?
A I don't recall his precise words.
Q Did he say he didn't know anything about it, words to that effect?
A Something that triggered me to say I will fax you a copy of it, and I did.
Q And then you spoke with Mr. Iorio after you faxed him a copy of the directive?
A I don't recall.
Q At some point you agreed with Mr. Iorio that there would be about a two-week period for PLS to conduct the legal review?
A Yes, sir. I don't recall if that was part of the conversation where I faxed him the June 17th directive or a subsequent conversation.

144

Q Did Mr. Iorio ever indicate to you that he had a different interpretation than you did of the language of the June 17th policy directive? More specifically let me ask you this.
After reading the policy directive, the June 17th policy directive, did Mr. Iorio ever indicate to you that in his opinion, the directive did not require that PLS be given a chance to review the criminal referrals before they were submitted to the Justice Department?
A I don't recall any such statement.
Q What did you view PLS's role to be in reviewing the nine criminal referrals in the Madison case at the end of September and the beginning of October 1993?
A The directive says that I, PLS, am to review these referrals before they go to the Department of Justice or the FBI. Consistent with my practice, both in private practice and with the RTC, a review to me means you look at the facts to see -- you look at the accusations or the allegations and you determine if the facts support those allegations

145

and if there is evidence to support the facts.
That kind of marrying up of the facts and the law is integral to a review process by any competent lawyer.
Q Was it your expectation that the review conducted by PLS would, if appropriate, make suggestions to the officials in the Office of Investigations as to how to improve the referral or as to additional information that perhaps they should obtain before submitting the referral?
What were you hoping to achieve by sending the legal review to the Office of Investigations?
A To point out the very issues that the U.S. Attorney's Office, the lawyers in the U.S. Attorney's Office would -- the concerns and the issues that they would have would come to the forefront of their review of these referrals as they went through the allegations.
Q In your view, was the PLS legal review for the benefit of the Office of Investigations at the RTC or for the benefit of the U.S. Attorney's Office?
A Neither. It was to benefit the strength

146

and character of those referrals and to make them a better product.
Q How did you expect that the legal review would achieve that?
A Because I had experienced lawyers looking at it through the eyes of lawyers, not investigator to lawyer, how I perceived the U.S. Attorney's office would look at those referrals. A lawyer goes through and says these are the elements of the crime and this is the evidence I have to support the elements of the crime. It was that process we go through.
In that process, you have certain issues and concerns that come up about the information that is there, and not there as the case may be, that can help strengthen the referral document itself that is ultimately sent on to the decisionmakers in the U.S. Attorney's Office.
Q So, the intention was that the legal review would make recommendations to the Office of Investigations as to how investigations could improve the content of the referral; is that right?
MR. FOWLER: When you say "intention,"

147

whose intention?
BY MR. KRAVITZ:
Q Your intention. Was it your expectation that an intention -- that the legal review process would improve the quality of the referral? I think that's what you already said.
A My goal was to make it a better referral document, yes.
Q How was that to happen between the time that the legal review was submitted back to the Office of Investigations and the time that the criminal referral, the final product, was actually submitted to the Justice Department?
A By identifying issues and concerns, I give the recipient of that document an opportunity to address those concerns. I did not, as I said earlier, have the authority to make them deal with those concerns and questions.
Q But it certainly was your hope that the Office of Investigations would consider the observations and suggestions and concerns that were set forth in the legal review and, if appropriate,

148

make changes to the body of the criminal referrals to improve the criminal referrals before submitting them to the Justice Department?
A Sir, it is my object in every legal document I review to make it a better document by raising issues and concerns that, if addressed, will make it a stronger document.
Q Okay. Did the PLS review in the Madison case in the fall of 1993 make suggestions as to how the Office of Investigations might improve the quality of those nine criminal referrals?
A I'm not sure I understand your question.
Q The legal review -- you sent a memo back to the Office of Investigations; is that right?
A Yes, sir.
Q Did that raise issues of concern or make suggestions as to how the Office of Investigations might improve the quality of those referrals before the referrals were submitted to the Justice Department?
A It identified the issues and concerns that we had as lawyers with the referral documents.

149

Q And those were issues and concerns that you as lawyers thought should be addressed before the referrals were finally submitted to the Justice Department; correct?
A Any time I make a suggestion, by making that suggestion -- by raising that issue and concern, I believe that if that issue is addressed, it will be a stronger, more persuasive document.
Q You thought those issues and concerns should have been addressed by the Office of Investigations before the referrals were finally submitted to the Justice Department?
A Otherwise, there is no purpose to the review.
Q That's my question.
And would it be your view that if the Office of Investigations made no changes to the referrals based on the legal review memo that the legal review memo had not achieved the purpose that you intended it to have?
A I don't know.
Q Has PLS done legal reviews of criminal

150

referrals in cases other than Madison since the fall of 1993?
A Yes, sir.
Q Have those legal reviews been done in writing?
A Yes.
Q Have all of them been done in writing?
A Yes.
Q So, if someone in the Office of Investigations were to claim that the legal review conducted by PLS in the Madison case was the only one that was ever put in writing, that would be incorrect?
A They would be misinformed.
Q You testified previously about a meeting that you had with Mr. Iorio in November of 1993 in which you said that you laid out a series of events that greatly troubled you about Ms. Lewis's participation in the Madison case. I believe you testified it was at this meeting that you asked Mr. Iorio to remove Ms. Lewis from the Madison case; is that right?

151

A I did not say Madison case. It is Paragould.
Q You asked Mr. Iorio to remove Ms. Lewis from the Paragould case?
MR. FOWLER: The problem is your characterization of what she laid out to Mr. Iorio in that meeting.
BY MR. KRAVITZ:
Q I didn't mean to mischaracterize what you said. You met with Mr. Iorio in November of 1993 and asked him to remove Ms. Lewis from the Madison case; is that correct?
A Yes, I did.
Q I believe you testified that at that meeting you laid out a series of concerns that you had about Ms. Lewis?
A Yes.
Q What were the concerns that you told Mr. Iorio about in that November 1993 meeting?
A They relate to Ms. Lewis's work on an institution known as Paragould, the fidelity bond case that I mentioned earlier. She worked directly

152

with the AUSA --
Q The Assistant U.S. Attorney?
A Yes -- in Little Rock, Arkansas, and agreed to a plea agreement with one of our target defendants in our fidelity bond case that did not require any cooperation or restitution. In other words, the interests of the RTC were wholly unprotected while the interests of the Department of Justice were well served.
I believed that that showed -- my concern was that Ms. Lewis had crossed the line and did not understand that her representations had to represent the best interests of the RTC, not the Department of Justice.
Q Did Ms. Lewis's actions in the Paragould case result in the RTC's inability to collect money from a criminal defendant or other entity that the RTC otherwise would have been able to collect?
A The value of the fidelity bond claim was diminished as a result of our inability to secure cooperation from the target defendant on an issue related to discovery, which is paramount to

153

successful pursuit of a fidelity bond claim.
Q How much money did the RTC lose as a result of that?
MR. DINH: Wait a minute. You stated earlier that now we are in the land of speculation here. You are talking about "would have been able to collect," "how much money did the RTC lose as a result of that?" We are all talking about speculation as to what would have happened, given her cooperation, what would have happened with respect to the value of the bond, what would have happened in a court of law.
Now you are making a characterization as to actual losses?
MR. KRAVITZ: Your objection is noted for the record.
BY MR. KRAVITZ:
Q Ms. Yanda, can you tell us how much money you believe that the RTC would have been able to collect through a restitution order or through the fidelity bond claim were it not for Ms. Lewis's actions in the Paragould case?

154

MR. WARIN: Can you give an opinion on that?
THE WITNESS: I have an opinion, yes.
BY MR. KRAVITZ:
Q What is your opinion?
A I told you earlier that my background and expertise prior to coming to the RTC was related in part to my work on fidelity bonds. This was a fidelity bond case. It was with a former client of mine, St. Paul Fire & Marine. They were the carrier on this case.
I believe that based on my experience that had we had the cooperation of this pivotal witness on the issue of discovery that we would have been able to recover significantly more than we ultimately did on the bond claim. I believe that the loss to the agency was approximately $200,000.
Q How much did the agency collect on the bond claim?
A $550,000.
Q So you believe that were it not for Ms. Lewis's conduct, the agency would have been able

155

to collect approximately $750,000?
A Based on our litigation risk analysis using the Mark Victor approach, yes.
Q That's the way you analyze the value of various pieces of litigation?
A Yes.
MR. WARIN: It is a common litigation technique of a person who does kind of a decision tree risk analysis model that has been around for a number of years. Mr. Victor has a seminar program that he articulates this in across the country.
BY MR. KRAVITZ:
Q You testified a moment ago that you thought that Ms. Lewis's conduct in the Paragould case crossed the line. What did you mean by that?
A Exactly what I said earlier, and that is that she had not protected the interests of her employer, the RTC, and had allowed the interests of the Department of Justice to subsume the RTC's interest.
Q Were there any other cases other than Paragould that you were aware of in which Ms. Lewis

156

crossed the line, either in that regard or in any other regard?
A That is the case that I can quantify the concern.
Q What about the First of Fayetteville case? Are you familiar with Ms. Lewis's conduct in that case?
A She was the assigned criminal investigator in that case, yes.
Q Do you have any concerns about Ms. Lewis's actions in the First of Fayetteville case?
MR. WARIN: Let me confer with my client.
(Counsel conferred with the witness.)
BY MR. KRAVITZ:
Q You have testified that Ms. Lewis was the criminal investigator on the First of Fayetteville case.
A Yes, sir.
Q Has anyone brought to your attention concerns about Ms. Lewis's conduct in that case?
MR. WARIN: In that investigation?
MR. KRAVITZ: In that investigation.

157

THE WITNESS: It wasn't the investigation that was brought to my concern. It was her failure to share with PLS the fact that she had made referrals relating to our target defendants in the Fayetteville civil professional liability matters.

We had a trial in the spring of 1993 in which we tried our D&O liability claims involving these target defendants and we lost. The jury instruction in that case specifically identified the fact that we had no evidence of fraud.

The basis of Ms. Lewis's referral to the U.S. Attorney's Office relating to these target defendants was fraudulent activity. She knew there was a trial. The office, and in fact one of the investigators in the Kansas City investigative office was one of the witnesses at that trial.

BY MR. KRAVITZ:

Q Who was that?

A Leslie Tieszen. At no point in time did anyone in Kansas City investigations tell either Neysa Day, who was the attorney responsible for the Fayetteville trial, Ms. Day's supervisor or myself

158

that there was a criminal referral out there where Ms. Lewis felt she developed evidence of fraud.

Q The civil trial in the First of Fayetteville case was in the spring of 1993?

A Yes, sir.

Q When were the criminal referrals made by the Office of Investigations in that case?

A I don't know.

Q Before then?

A I don't know the date of them.

Q Was it before the time of the civil trial?

A Yes, it was.

Q So, the Office of Investigations certainly was aware of these criminal fraud allegations as of the time of the civil trial?

A Certainly Ms. Lewis was, yes.

Q To your knowledge, has Ms. Lewis ever stated why it is that she failed to inform PLS about the claims of fraud contained in her criminal referrals in the First of Fayetteville case?

A I'm not aware of any.

Q What could the PLS lawyers have done with

159

evidence of fraud in that trial had they had it?
A We would certainly have examined it and seen if it was evidence that we could introduce at trial to prove fraudulent intent on the part of our target defendants and it would have made a stronger civil claim.
Q Was Ms. Lewis's failure to inform PLS of the criminal referrals in the First of Fayetteville case another example of your belief that Ms. Lewis was not acting as a team player at the RTC?
A I don't know about your characterization.
MR. DINH: Exactly what belief at what time? At this point we only have Paragould as the belief, as I understand it, in September of 1993 with respect to her communications with Mr. Iorio which is where this entire line of questioning started from. I thought at that point that was only Paragould.
Can you unpack it for me, if not for the witness?
MR. KRAVITZ: I asked her if this was another example. Your objection makes it clear that there already has been one example she just testified

160

about. I just asked her if this was another example.
MR. WARIN: I think actually the witness came back and said something about the characterization.
BY MR. KRAVITZ:
Q I thought you said previously in this deposition that you were concerned that Ms. Lewis was not a team player. If I misheard that, I apologize.
A My concern is you started this line of questions relating to my conversation with Mr. Iorio. I recall discussing the Paragould case with Mr. Iorio. I do not recall whether I discussed Fayetteville with him or not. I was certainly aware of Fayetteville.
Q Do you know what it was that Ms. Lewis was doing working on the Madison case as of November 1993 in light of the fact that there were criminal referrals that had already been submitted a month earlier?
A No, sir, I don't.
Q To your knowledge, was there anything more

161

for the Office of Investigations to be doing in the Madison case in November of 1993 that Ms. Lewis would need to be removed from?

A Mr. Iorio indicated to me that the work was over. Historically when a referral goes out the door, the lion's share of the investigative work is complete at that point in time.

Q Mr. Iorio indicated that to you with regard to the Madison case specifically or just with regard to cases generally, that once a referral goes out the door, the work is over?

A Specifically in relationship to Madison and our ability to remove both Karen and Jean from the case.

Q I want to ask you some questions about the administrative law issue. I believe you testified, and I hope I'm not mischaracterizing you --

MR. WARIN: Administrative leave issue?

MR. KRAVITZ: Yes.

BY MR. KRAVITZ:

Q I believe you testified that you told Mr. Hindes that the Office of Investigations'

162

obsession with the Madison case and their resulting lack of productivity had made it impossible for you to do your job.

A And the demoralized staff, yes.

Q How was it that the Investigations office's obsession with the Madison case made it impossible for you to do your job running the PLS office?

A At the time this happened, I was in a very critical stage of PLS's field work. Our cases had been on file for about a year now. They were getting very deep into the pretrial discovery and litigation phases.

I needed litigation support. I have an investigative staff whose efforts are being focused in any direction but pursuit of our civil claims. The talk, the conversations, just the office gossip had led to a productivity level that was next to nothing. I needed work, I needed support, and I couldn't get it.

Q So you had ongoing litigation and civil cases other than the Madison case; is that right?

A I have nothing to do with the Madison case,

and I don't know about any civil litigation out of Madison.

Q But you had cases -- you had litigation going on in cases other than Madison?

MR. WARIN: That has as a presumption that she had cases going on for Madison.

MR. KRAVITZ: I don't mean to imply that.

MR. WARIN: She had no responsibility for Madison. The question is did you have litigation going on that you were supervising?

THE WITNESS: Absolutely.

BY MR. KRAVITZ:

Q And you needed the assistance of investigators to back up that investigation?

A And Mr. Iorio to spearhead and focus that support in helping PLS in pursuit of our civil liability claims.

Q What type of work did you need Mr. Iorio and his office to do on those cases that they were not doing?

A One example is we had a case going to trial, I can't remember the case name, but it was in

Casper, Wyoming. I wanted Richard to send an investigator to serve as the RTC representative in trial in front of a jury. I thought it would be harmful to the RTC's interest to use the PLS attorney as the RTC representative, not to mention the fact that the PLS attorney at any given time might take over part of the trial work at the trial.

Mr. Iorio indicated that his investigative staffs were too busy to devote the kind of time needed to provide that kind of litigation support for me.

Q Did Mr. Iorio specifically tell you that his staff was too busy working on the Madison case or did he simply say they were too busy?

A His characterization was "too busy."

Q Is it your understanding that his investigative staff was too busy because of Madison as opposed to because of other duties?

A I was getting calls from the investigators.

Q Tell us about that.

A Investigators would call me and tell me

165

that the civil work was being put aside so that they could provide whatever support was needed on the Madison referrals.

Q Were these civil investigators who were calling you or criminal investigators or both?

A I had at any given time investigators from both sides call me.

Q Which investigators called you? Do you remember?

A The ones that I recall are Dick Parks, Sandy McCann, Pat Robison. Those are the only ones I can recall.

Q What was the time period during which you were receiving these calls from these investigators?

A 1994.

Q 1994. Did you receive any similar calls from these or other investigators in 1993?

A Not that I recall.

Q In other words, these calls all came after the last set of nine criminal referrals in the Madison case had already been submitted to the Justice Department?

166

A Yes, sir.

Q And the investigators were telling you that they were unable to work on the civil cases, the civil litigation because they were being pulled off by Mr. Iorio to work on Madison?

MR. WARIN: I don't think that was her characterization. Why don't you go ahead and testify to what your testimony is.

THE WITNESS: That isn't my characterization.

They were talking about the demoralization of that office, about the fact that Mr. Iorio was focused on Madison, they could not get him to focus on providing the kind of support they needed to do their jobs, the domino effect, if they can't do their jobs, it impacts my ability to do my job.

I specifically recall this instance where I went to Richard and asked for investigative support in a trial capacity and was told unequivocally no.

BY MR. KRAVITZ:

Q Am I correct that this case you have testified about that had a trial in Casper, Wyoming

167

is but one example of a number of cases that your office was handling in which your litigation position was harmed by the actions of the Office of Investigations?

A Yes, sir.

Q The Wyoming case was not the only case harmed by the conduct and the resulting morale problems?

A Your characterization of "harmed" is unwarranted. We won the case, but it was by the efforts of outside counsel in the professional liability section.

MR. KRAVITZ: Off the record.

(Discussion off the record.)

BY MR. KRAVITZ:

Q Ms. Yanda, I'm going to show you what has been marked as JY 0131 and ask you if you can tell us what that document is.

(Witness examined the document.)

A I believe it is a copy of Mr. Duane Curtis's notes.

Q Have you seen that document before?

168

A Yes, sir.

Q What are those notes from, if you know?

A Following the call from Mr. Hindes to me in August of 1994, Mr. Hindes asked Duane and me to -- Mr. Curtis and me to outline some of the concerns we had about Mr. Iorio's, Mr. Ausen's and Ms. Lewis's performance.

Q These are notes that Mr. Curtis took during a meeting he had with you when you were outlining these concerns?

A He was writing things down as we were talking that day. I do not know when or where he completed his notes.

Q Why don't you take a moment to read through this document and let us know if it refreshes your memory as to concerns that you and Mr. Curtis had about Mr. Iorio that you have not previously testified to.

(Witness examined the document.)

A The ones I have personal knowledge about are the ones I have identified for you today.

Q So there are other concerns that are on

169

this document that are concerns that you don't have personal knowledge of?
A Some of these notes I can't read. We talked about the morale issue. We have talked about the time-off awards.
MR. DINH: If you don't have personal knowledge, the document speaks for itself.
MR. KRAVITZ: Excuse me. She is in the middle of her answer.
(Witness reviewed the document.)
THE WITNESS: No, sir.
BY MR. KRAVITZ:
Q I'm going to show you another document marked JY 0132 and JY 0133. Are these also notes of Mr. Duane Curtis?
A It appears to be his handwriting, yes.
Q Do those appear to be notes indicating concerns that you and Mr. Curtis had about Ms. Lewis?
A To my knowledge, I never saw these documents until the Independent Counsel showed them to me.
Q Any of these documents or just the two that

170

you have in your hand now?
A The two you have just referenced.
Q Had you seen the document about concerns about Mr. Iorio before you went to see the Independent Counsel?
A Yes, sir. As I testified, I believe those are the notes that Duane wrote.
Q While you were meeting?
A Yes.
Q During this conversation with Mr. Curtis, did you also discuss concerns you and he had about Ms. Lewis?
A Pursuant to Mr. Hindes's directive, yes, we did.
Q Was there a concern that you and Mr. Curtis discussed with regard to Ms. Lewis about time and attendance sheets?
A Yes. Some of the investigators had expressed a concern that Ms. Lewis was not being truthful in her time and attendance sheets.
Q More specifically, were the concerns that Ms. Lewis was working on the Madison case and marking

down that she was working on other cases so that the time sheets would not indicate that she was working on Madison, or was it some other concern?
A I don't recall anything other than what I have told you.
Q This document indicates something about travel vouchers and authorizations. Do you remember whether there was any concern that you discussed with Mr. Curtis with regard to Ms. Lewis about travel vouchers and authorizations?
A I don't recall discussing that with Mr. Curtis that day.
Q Do you recall any discussions with anyone regarding concerns that Ms. Lewis had acted improperly with regard to travel vouchers?
A Some of the investigators had made some accusations about her misuse of travel vouchers, but I don't know anything more about it.
Q What were the accusations that you heard?
A That she had misused her travel vouchers.
I have to make a request. I am going to miss a chance to talk to my son tonight if I don't

call him right now.
MR. KRAVITZ: I don't want to make you miss that. Off the record.
(Discussion off the record.)
(Recess.)
MR. KRAVITZ: Ms. Yanda, in light of the late hour and it is obvious that everyone is very tired here and your lawyer needs to leave, I am going to forego further questioning at this time and Mr. Dinh is going to have five more minutes of questions and this deposition will be over.
MR. WARIN: For the record, two individuals have come in beyond counsel taking questions, a Timothy Mitchell, who has come in halfway through or three-quarters of the way through at the tail end of the deposition, and sir, your name is?
MR. BARTOLOMUCCI: Chris Bartolomucci. I am with Majority staff.
MR. WARIN: Thanks.
EXAMINATION
BY MR. DINH:
Q One question on the First Fayetteville

173

case. You said you had an investigator working with you in the investigations unit. Her name was Leslie --

A The testifying investigator was Leslie Tieszen.

Q To the best of your knowledge, did you know whether Ms. Tieszen or Ms. Lewis talked about the case?

A I don't know.

Q Now, you said earlier that you had expressed concerns to your supervisor regarding the conduct of the investigations unit and I think the word was their obsession with the Madison Guaranty case that made them unproductive in other matters with respect to the general office as a whole; correct?

A That was part of what I said, yes.

Q Now, you expressed those concerns to Mr. Hindes?

A Yes, sir.

Q Do you know -- approximately how close to August 14th or how close to the day they were placed

174

on administrative leave did you express these concerns to Mr. Hindes?

MR. WARIN: Our client has previously testified that during 1994 there was a series of telephone conversations between herself and Mr. Hindes in which she articulated those concerns.

BY MR. DINH:

Q When was the last telephone call you can recall?

A I don't recall.

Q Do you recall when your meeting with Mr. Curtis took place in which you had previously testified referring to his notes?

A We are talking about Mr. --

Q With Mr. Curtis. You testified Mr. Hindes suggested you meet with Mr. Curtis and talk about the conduct of these investigators; is that right?

A Which Curtis are we talking about?

Q Duane Curtis.

A All right.

MR. WARIN: I don't believe that the testimony is that Mr. Hindes directed her to meet

175

with Mr. Duane Curtis. I don't believe that is our client's testimony. That characterization is incorrect.

If you can answer the question of how you got to talking to Mr. Curtis, please try to answer that question, Mr. Duane Curtis.

THE WITNESS: Mr. Hindes asked me to prepare -- he asked Duane Curtis and I to prepare a list of our concerns relating to the performance of the three who were placed on admin leave.

BY MR. DINH:

Q Do you know approximately when this meeting took place between you and Mr. Curtis?

A The week before the three were placed on admin leave.

Q Obviously subsequent to your expressions of concern to Mr. Hindes regarding the obsession with Madison case by the investigations unit?

MR. WARIN: Viet, you shouldn't shorthand this to be the obsession with the Madison case. I know why that is why all of you are circled around this table. But she said there was an obsession, and

176

then she went on and articulated a variety of other concerns, the lack of productivity, the morale issues and so forth.

BY MR. DINH:

Q The lack of productivity and the low morale, did those all arise out of the obsession with Madison?

MR. WARIN: How can she answer that question?

MR. DINH: It seems to me from her prior testimony that the principal reason was the obsession with Madison that caused -- that was an intermediate and principal cause of all these other manifestations of problems which showed up in low morale and in low productivity; that is, people were put on Madison and not devoting their time to civil claims, civil investigations.

MR. WARIN: She cannot create the Hegelian analysis that you are asking her to undertake to determine why there is a lack of productivity.

There has been concerns and articulation about lack of productivity. She has repeated that to

177

her boss. She has been told by a variety of investigators about the low morale.

Coincidentally with all of that there is an obsession with Madison and her work can't get done. That's what you are missing here.

BY MR. DINH:

Q Is that your testimony, your counsel's characterization of it?

A Yes.

Q It is. So you cannot determine whether the quote, unquote, obsession with Madison contributed to or caused the lack of productivity in the Office of Investigations in Kansas City?

A Your question is different this time around. I don't know. I know the impact. I do not know the motivation.

Q You do not know the cause?

A Right.

Q The specific allegations that you sat down with Mr. Curtis about which are reflected in his notes which you reviewed earlier relate to travel vouchers and authorizations, Ms. Lewis's

178

misstatements in her time sheets that counsel asked you about and the travel vouchers.

Under the general rubric of your concerns with respect to the investigations unit, which did that fall under? The obsession with Madison? Or was it lack of productivity or is it something else or that these allegations are wholly unrelated to your concerns with respect to the investigations unit?

A The word I used earlier and the characterization I use now, it is the penumbra effect. This was all part of that that had a significant impact on our office to do our job.

Q Some of this penumbra is the misusing of travel vouchers?

A I don't know.

Q All I'm trying to do is find out whether you have any basis for knowledge of the link between Madison Guaranty, the lack of the productivity in other cases and/or the specific allegations that you and Mr. Duane Curtis were talking about.

This is what your counsel has characterized as the Hegelian analysis. I am asking, do you have

179

any basis?
A I have articulated the facts. Those facts are what I stand by. Whatever analysis or hoops you want to jump through, you jump through them. I am not going to differentiate from the facts as I have articulated them for the last five hours.
Q Do you know if any of the specific items that you discussed with Mr. Curtis during that meeting, whether they contributed to lower productivity or low morale of the investigations unit in Kansas City?
A No, I did not.
Q One more question. Were you aware that a victim impact statement was sent by PLS to the sentencing judge in the Paragould case without review by the U.S. Attorney's Office?
A Pursuant to RTC's policy, yes, it was.
Q Did you order that victim impact statement -- who sent that victim impact statement by PLS?
A Who prepared it?
Q Yes.
A Karen Carmichael.

180

Q Who sent it? Did it go through you or was it sent out under your signature?
A No.
Q Did she send it directly?
MR. WARIN: That's five questions. Last question. Yes or no.
THE WITNESS: No.
MR. DINH: Wait a minute. You can't --
BY MR. DINH:
Q Who sent that was my original question, was who sent the PLS -- who in the PLS sent the victim impact statement?
A You are assuming that PLS sent it. I am telling you we didn't send it. We followed the policies and procedures of the RTC, period.
Q Who sent it outside of PLS then?
A I don't know.
Q Karen Carmichael prepared it and it was sent out by someone you don't know?
MR. WARIN: She said she didn't know.
THE WITNESS: I know who I sent it to. I don't know who sent it out.

BY MR. DINH:

Q Who did you send it to?

A The vice president.

Q Who?

A Dennis Cavinaw.

Q You don't know to whom he sent it beyond that?

A I don't know. He is the vice president.

MR. WARIN: She has answered it now three times. She doesn't know who sent it out; is that correct?

THE WITNESS: I don't know who sent it out. Quite frankly, I am so tired now I don't know which vice president was in charge in that period of time. It could have been Mr. Cavinaw or Mr. Thompson, and I don't know right now.

MR. WARIN: Let's go.

MR. DINH: I have nothing further.

(Whereupon, at 6:46 p.m., the deposition was concluded.)

JULIE FRY YANDA

CERTIFICATE OF NOTARY PUBLIC & REPORTER 182

I, BRENDA M. SMONSKEY, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Brenda Smonskey

Notary Public in and for the
District of Columbia

My Commission Expires SEPTEMBER 14, 1996

GIBSON, DUNN & CRUTCHER
LAWYERS
1050 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036-5306

(202) 955-8500
TELEX: 892801 GIBTRADE WSH
FACSIMILE: (202) 467-0539

JAS. A. GIBSON, 1908-1932
W. E. DUNN, 1894-1926
ALGERY CRUTCHER, 1890-1931

LOS ANGELES
333 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071-3197

CENTURY CITY
2029 CENTURY PARK EAST
LOS ANGELES, CALIFORNIA 90067-3026

ORANGE COUNTY
4 PARK PLAZA
IRVINE, CALIFORNIA 92714-8557

SACRAMENTO
400 CAPITOL MALL
SACRAMENTO, CALIFORNIA 95814-4407

SAN DIEGO
750 B STREET
SAN DIEGO, CALIFORNIA 92101-8205

SAN FRANCISCO
ONE MONTGOMERY STREET, TELESIS TOWER
SAN FRANCISCO, CALIFORNIA 94104-4505

SEATTLE
999 THIRD AVENUE
SEATTLE, WASHINGTON 98104-7036

NEW YORK
200 PARK AVENUE
NEW YORK, NEW YORK 10166-0193

DALLAS
1717 MAIN STREET
DALLAS, TEXAS 75201-7300

DENVER
1801 CALIFORNIA STREET
DENVER, COLORADO 80202-2624

BRUSSELS
AVENUE LOUISE 65
B 1050 BRUSSELS, BELGIUM

PARIS
166 AVENUE RAYMOND POINCARÉ
75116 PARIS, FRANCE

LONDON
30/35 PALL MALL
LONDON SW1Y 5LP

HONG KONG
8 CONNAUGHT PLACE
HONG KONG

TOKYO
TORANOMON 3-CHOME ANNEX BLDG
3-7-18 TORANOMON, MINATO-KU
TOKYO 105, JAPAN

AFFILIATED SAUDI ARABIA OFFICE
JARIR PLAZA, OLAYA STREET
P.O. BOX 15870
RIYADH 11454, SAUDI ARABIA

November 28, 1995

VIA FACSIMILE

WRITER'S DIRECT DIAL NUMBER

(202) 887-3636

OUR FILE NUMBER

T 98199-00001

Ms. Lori Conlon
Special Committee to Investigate
Whitewater and Related Matters
U.S. Senate
534 Dirksen Office Building
Washington, D.C. 20510

Re: Statement of Julie F. Yanda

Dear Ms. Conlon:

Attached please find an errata sheet pertaining to the November 2, 1995, deposition of Julie Yanda.

Please do not hesitate to call if there are any questions.

Very truly yours,

Jerry S. Fowler, Jr.

Attachment

JSF/pjm

WL963320.050/1+

Errata Sheet

Deposition transcript of Julie Fry Yanda

November 2, 1995

Page	Line	Correction
23	4	accountant
54	6	chain
69	3	"then
69	4	job"
167	11	and the

DEPOSITION OF ALBERT V. CASEY
IN RE: S. RES. 120

FRIDAY, NOVEMBER 3, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of ALBERT V. CASEY, called for examination pursuant to notice of deposition, at 10:00 a.m. in Room 534 of the Dirksen Senate Office Building, before PATRICIA A. ZUBER, a Notary Public within and for the District of Columbia, when were present:

H. CHRISTOPHER BARTOLOMUCCI, ESQ.
Majority Associate Special Counsel
LANCE COLE, ESQ.
Minority Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

CONTENTS

WITNESS	EXAMINATION
Albert V. Casey	
by Mr. Bartolomucci	7
by Mr. Cole	12
by Mr. Bartolomucci	22
by Mr. Cole	25

PROCEEDINGS

MR. BARTOLOMUCCI: We're on the record now, Mr. Casey, and first thing I want to thank you for making yourself available to us this morning. There are some things I should tell you before we begin.

THE WITNESS: Okay.

MR. BARTOLOMUCCI: This is a deposition being conducted pursuant to Senate Resolution 120. That resolution establishes a special committee administered by the Banking Committee to conduct an investigation of Whitewater Development Corporation and certain other related matters including matters involving the Resolution Trust Corporation.

This deposition, as we've told you, is in advance of public hearings which will occur later this month and you may or may not be called to testify at those hearings. The questions which I'll be asking you you'll be asked to answer them under oath. If you don't understand a question or the communication isn't clear, please let me know and I'll try to rephrase it or restate it for you.

THE WITNESS: Sure.

MR. BARTOLOMUCCI: Our stenographer is going to prepare a transcript of these questions and answers, and that transcript is going to be treated as what we call committee confidential until the start of the hearings. And as Mr. Cole told you before we went on the record, you'll be given an opportunity, if you want it, to come to the Senate and look at the transcript to make any corrections that you might have if you're --

THE WITNESS: Come to the Senate. Do I go to a particular office?

MR. BARTOLOMUCCI: Lance, do you want to field that one?

MR. COLE: Sure. Mr. Casey, the procedure that we follow is that we've contacted people in advance of our hearings and arranged with them a date and time for them to come here and review their transcript. For an out-of-town witness like yourself that obviously presents some difficulties. And what I would suggest that we do is wait until we determine, based largely on the testimony you are going to give us this morning, whether there is any

5

likelihood that you'll be called as a hearing witness. And if not, perhaps the issue won't arise.

THE WITNESS: Be moot. That reason is perfect with me, no problem.

MR. BARTOLOMUCCI: This is Mr. Bartolomucci again. If you are called to testify at a hearing, as I think Lance told you earlier, you will be given a copy of the deposition four days in advance thereof.

THE WITNESS: Thank you.

MR. BARTOLOMUCCI: Is anyone present with you at your end?

THE WITNESS: I'm alone. My secretary -- I'm at SMU, I'm a professor here teaching, and there's nobody in the office at all.

MR. BARTOLOMUCCI: Okay.

THE WITNESS: I'm totally alone.

MR. BARTOLOMUCCI: There are just a few more things I have to tell you before we start the deposition. Certain objections to questions may be lodged. Objections to the form of the question we note for the record. Objections on grounds of privilege or as going beyond the scope of the

6

resolution are also permissible and if necessary our Committee Chairman may rule on objections if you refuse to answer a question. I'm going to have the court reporter swear you in right now.

THE WITNESS: Certainly. Who is your Chairman of the Senate Banking Committee now?

MR. BARTOLOMUCCI: Alfonse D'Amato.

THE WITNESS: Of course he is. Who is the leader of the Minority?

MR. COLE: Senator Paul Sarbanes.

THE WITNESS: Yes, I know them both very well.

MR. COLE: And I realize this is a little irregular to swear you in by telephone, but since --

THE WITNESS: I've done it before.

MR. COLE: -- there is not a court reporter there and we would like to have you answer our questions under oath, I think what we would ask the court reporter to do, notwithstanding the fact that you're not present here, is to swear you if you're agreeable to that.

Whereupon,

ALBERT V. CASEY
was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. BARTOLOMUCCI:

Q Okay. Mr. Casey, I just have a few questions for you, and then I'm going to turn this over to Lance and then possibly I'll have some follow-up questions when he's finished. Would you please state for us and for the record your full name.

A My name is Albert Vincent Casey, C-a-s-e-y.

Q And Mr. Casey, am I correct that you were formerly the chief executive officer of the Resolution Trust Corporation?

A That's correct.

Q During what years did you hold that position?

A I literally took it on October 15th, 1991, replacing Bill Seidman and then the law changed February 1, '92 and they appointed, you know, the legislation -- it had to be cleared by the

Presidency, Senate and so forth. That's February 1 '92, and I served until March 15th, '93.

MR. COLE: And Mr. Casey, when you said a Presidency, were you referring to a presidential appointment in your position?

THE WITNESS: No, the law changed and they changed the powers and authorities and made me total CEO as of February 1, '92. We had oversight by the Banking Committee and an oversight board of -- board of oversight by those people. I'm trying to remember quickly what that legislation changed, but I had absolute authority to do anything I wanted to do.

BY MR. BARTOLOMUCCI:

Q Mr. Casey, I think our court reporter is doing a good job getting down most or almost all of what you say. I'll just ask you to be extra careful in enunciating for us so that we get you clearly on this end.

A I'll tell you very quickly I've had four serious heart attacks. I've had a total stroke and my throat has never recovered. I have problems speaking, sir.

MR. BARTOLOMUCCI: We appreciate your efforts.

MR. COLE: We'll bear that in mind, Mr. Casey, and we'll try to go as quickly and as efficiently as we can.

THE WITNESS: Maybe I'm going too fast.

BY MR. BARTOLOMUCCI:

Q Let me get to my questions, we'll try to get this over as quick as possible.

Mr. Casey, in 1992, did you ever have a conversation with C. Boyden Gray about an RTC criminal referral related to Madison Guaranty Savings & Loan or related to Bill or Hillary Clinton?

A Yes.

Q When did that conversation occur?

A I knew you were going to ask and I'm trying to think. It was either the end of September or early October. It was in that time frame.

Q Who initiated the conversation?

A He called me.

Q And what did he say to you?

A He just asked me if I knew about it, what

was going on, what was the status. And that was the first that I ever heard of that subject at all.

Q And what did you tell him at that time?

A I'd find out about it.

Q Okay. And did you go and find out about it?

A I found out something. I talked to Bill Roelle, R-o-e-l-l-e, and asked him about it. He came down to my office and explained the Clintons were not subjects of the inquiry but may be called as witnesses. That's all I ever learned about it.

Q So in response to this conversation with Mr. Gray, you had one conversation with Bill Roelle?

A That's correct.

Q And then did you subsequently have another conversation with Mr. Gray?

A Yes.

Q When was that?

A Same day.

Q The same day that you talked to Bill Roelle?

A The same day that I talked to Bill Roelle.

11

Q So all three of these conversations occurred on the same day?
A Within an hour.
Q And in your second conversation with Mr. Gray, what did you tell him?
A I didn't tell him anything. He came right on the phone and said Al, forget my request. I don't want you to tell me a thing. I said fine. He hung up.
Q That was the end of it?
A That was the end of it.
Q In 1992, did you ever have a conversation with anyone else at the White House other than C. Boyden Gray about the Madison Guaranty referral?
A No.
Q Is there anything else you want to add about conversations you've had about the Madison referral?
A No. I really don't, because exactly what I've told everybody.
MR. BARTOLOMUCCI: Okay. I think that's all the questions I have for now. I'm going to give

12

it over to Mr. Cole.
THE WITNESS: Okay.
EXAMINATION
BY MR. COLE:
Q Mr. Casey, as I said earlier, I'll also try to be brief. Focusing your attention, if I could, on your first conversation with Mr. Gray when he called you, can you tell me, as best you can recall today, exactly what he asked you?
A Well, he asked me if I knew anything about the matter and I said no. I said I'll look into it.
Q And what I would like is to be as specific about that as possible, Mr. Casey.
A Sure.
Q When you say "the matter," did Mr. Gray indicate that he knew that this was a matter involving the Clintons or a matter involving a bank in Arkansas or what, as best you can recall, did he say to you?
A It had been in the newspaper and we both, you know, knew the subject as to being Whitewater. That's what I would assume and believe.

13

Q Do you have a recollection as to what newspaper it had been in at that time?
A It must have been The Washington Post.
Q Did Mr. Gray use the word "Whitewater" during that call?
A I don't honestly recall at all. I don't know whether I did, either.
Q Did Mr. Gray say anything to you to indicate what his source of information was, whether newspaper or otherwise?
A No. It was an extremely brief conversation.
Q And if I understand your testimony, you simply told Mr. Gray that you would make inquiries?
A Yes, sir.
Q And when you called Mr. Gray back --
A I didn't call him back. He called me again.
Q Oh, he called you a second time?
A Within the hour I had those three conversations.
Q I'm sorry. I misunderstood your earlier

14

testimony.
A Well, I'm sorry. I probably wasn't clear.
Q You called Mr. Roelle and spoke with him?
A Yes.
Q And then, within the hour, Mr. Gray called you back?
A Right. Almost immediately. Roelle could have even been in the room. I don't know. It happened so fast.
Q And after -- was your discussion with Mr. Roelle the first time you learned of this matter?
A Yes.
Q What did you know from the newspapers at the time you spoke with Mr. Roelle?
A I don't remember, sir, except that there was some general news article that the Clintons had been involved in a matter that now the RTC was involved in and I'm paraphrasing that because I don't really recall literally.
Q Did Mr. Roelle give you a copy of a document?
A No. I'd like to expand on that if I might.

15

Q Please do so, sir.
A You don't know my style of operation. I was not involved with a single case that ever came before the RTC. Once I had the new legislation on February 1, '92, I set up an executive committee of four people, all of whom reported to me, and I gave them every single bit of my authority, and that's how we resolved the cases that came to headquarters. I had other things to do than drown in the detail.
Q I understand. If I could go back briefly, Mr. Casey, to what you knew when you first received the inquiry from Mr. Gray and I'll tell you the source of my confusion. It's well known and a part of this record and a part of the public record that there had been news articles about Whitewater Development Corporation and the Clintons starting first in March of 1992 and thereafter.
To the best of my knowledge, sir, there had not been any news articles at the time we're discussing, that would be late September/early October 1992, about an RTC criminal referral. So I'd like to be as clear as possible about Mr. Gray's

16

inquiry and whether at the time Mr. Gray called you he knew that there was an RTC criminal referral involving Madison Guaranty Savings & Loan or Whitewater.
A Well, I didn't say I read about it in the paper that day. I knew the subject matter had been in The Washington Post. That's all I'm saying. I don't know when I first learned about the Clintons' involvement. That could have been March, April, June, July. I don't know.
Q Yes, I understand, sir. And the distinction I'm making, though, is a technical one between the Whitewater matter generally and the fact of an RTC criminal referral which, to my knowledge, had not been in the newspapers at that time. And so you can understand my confusion is how Mr. Gray would have known to call you about an RTC criminal referral that, to the best of my knowledge, in the record that's been developed by this committee, had not been in the press at that time.
A I wouldn't have any knowledge as to how he knew about that subject.

17

Q Are you certain, sir, that when he called he was asking about a criminal referral?
A No, no. He just brought up the Clintons' name and, you know, they were involved with an RTC matter. I don't recall the term "criminal referral" at all. I'm not sure that I ever knew it was a criminal referral at that time.
MR. COLE: One moment, Mr. Casey, someone has knocked on the door here.
THE WITNESS: Sure.
(Discussion off the record.)
MR. COLE: Mr. Casey?
THE WITNESS: Yes, sir.
MR. COLE: I'm sorry for the interruption.
THE WITNESS: No problem.
MR. COLE: Can we go back on the record?
THE WITNESS: Certainly.
BY MR. COLE:
Q If I could restate my question, the point that I'm struggling with here is whether when Mr. Gray first contacted you he was aware that there was an RTC matter involving the Clintons?

18

A With a criminal referral is something you called it.
Q Or whether the RTC had any involvement in this matter at this time. In other words, how did Mr. Gray know, if you have any sense, sir, of the --
A I really wouldn't have the slightest idea. He called me up. I don't think he ever used the term "criminal referral." He just referred to an RTC matter in which the Clintons were involved.
Q Bear with me while I take a note if I could.
A Go ahead. Go ahead.
(Pause.)
Q And Mr. Casey, was that the last communication you had with Mr. Gray on the subject when he called you back and said that he didn't wish you to pursue the matter?
A Yes, sir.
Q And since that time, up to and including the present, have you ever learned as to whether anyone else in the White House other than Mr. Gray was aware of the RTC matter involving the Clintons in

19

1992?
A No, sir.
Q Do you have any knowledge, sir, as to whether anyone in the RTC at any level provided information concerning an RTC criminal referral involving the Clintons to the White House?
A I have no knowledge at all. And I'd be aghast, absolutely amazed if anyone did because I cut down communications to newspapers, White House, to everybody.
Q I believe you stated earlier, Mr. Casey, that you reported to, and I believe the entity is the Thrift Deposit or Protection Oversight Board?
A That isn't quite the name. I think it's the RTC oversight board.
Q And do you recall, sir, whether you reported this matter involving the Clintons to that board?
A I did not.
Q Did you discuss with Mr. Roelle reporting the matter to the oversight board?
A No, sir.

20

Q I think I only have a couple more questions, Mr. Casey.
A Perfectly all right.
Q I do have, I wish you were here so I could show you a document, but I have one news article that I would like to describe and read from to you. And if you need me to read it more than once, please let me know and I'll do so.
I have a copy of an article from The Washington Times of March 30th, 1994. The headline of the article is "Ex-chiefs of RTC recall no politics there before '93." And the second paragraph of that article -- I won't read the entire article unless you wish me to do so.
A Oh, no, go ahead. Do what you want.
Q The second paragraph of the article has a quote and I'll read that quote to you. It says "'I never received a single inquiry from the White House nor did I seek advice from them,' said Albert Casey, who was interim chief executive officer of the RTC during the Bush Administration. 'It would have been inappropriate and improper,' he said."

21

And if you could, Mr. Casey, I'm trying to understand how this quotation, if it's an accurate quotation, relates to what you just told us about the inquiry you received from Mr. Gray.

A Well, he called and asked about it. He asked if I knew about it. And then he called back and said I don't want anything. That was the end of the inquiry. It ended. Without me providing him with anything.

Q I understand so in your mind, sir, then that call did not constitute an inquiry?

A It did not. It was withdrawn before I replied.

Q That's helpful. Thank you.

A Sure.

Q And the final question I would have, Mr. Casey, do you have any knowledge of any kind from any source as to whether Mr. Gray discussed this matter with anyone else other than yourself?

A I wouldn't have any knowledge as to that.

Q And I would ask the same question with regard to anyone else in the Bush White House or the

22

Bush Presidential campaign prior to the November 1992 election?

A No. The answer is simply no.

MR. COLE: Those are all the questions I have. Is there anything you would like to add? If there's any further information that you think we need to have a complete record here, please feel free to share that with us.

THE WITNESS: No. I'll reflect on it and if I do I'll feel free to call you back, but there's nothing that I have at this time except my best greetings to Paul Sarbanes. He's a good man and a good friend.

MR. COLE: I'm sure he'll appreciate that and particularly appreciate it having it on the record, but I'll pass it on to him, sir.

MR. BARTOLOMUCCI: Before we sign off, I'd like to ask a couple of follow-up questions.

THE WITNESS: Sure.

EXAMINATION

BY MR. BARTOLOMUCCI:

Q Regarding your first conversation with C.

23

Boyden Gray and about what you said in that conversation.
A Yes.
Q Now, do I understand you correctly that you had some awareness that Bill Clinton was involved in a matter relating to Whitewater Development Corporation and Madison Guaranty, that you were aware of that matter through press reports?
A Yes.
Q Okay. And you knew about that prior to the time you had the conversation with Mr. Gray?
A Yes.
Q And is it your testimony that that was the subject matter of the conversation with Mr. Gray?
A He called and asked me if I was familiar with the RTC matter that involved the Clintons, and I said no.
Q Is it possible that he was referring to the fact that Clinton was involved in Madison Guaranty and since that was an insolvent thrift, that was in the hands of the RTC?
A It certainly could be, but I honestly don't

24

remember. He just, it was a general inquiry. The Clintons and the RTC.
Q But there was no specific mention made of a criminal referral?
A Oh, no, no, no.
Q And I take it from that you don't have any knowledge as to whether he was at that time aware of the existence of an RTC criminal referral about Madison?
A I wouldn't have any idea as to that.
Q Just a couple more questions. How did you know Mr. Gray prior to that conversation?
A Socially.
Q So you had met him before?
A Yes.
Q Did you know what his position was in the White House?
A Yes.
Q And did you feel that there was anything improper about his calling you and making that, you know, having that conversation?
A It really, I'll have to say no to that

25

initially. As I reflected on it, I wondered about it and I felt relieved when he called me back.
Q When he called you back and said --
A Forget it.
Q Forget about it?
A Yeah.
Q And that was the end of the matter?
A Yeah, and I didn't say -- that conversation didn't take 30 seconds.
MR. BARTOLOMUCCI: That's all I have.
MR. COLE: I hate to do this, but that raises one follow-up question in my mind.
THE WITNESS: Doesn't bother me one bit. I've got my meter running. I get 215 an hour. I paid lawyers 600 million in 1992. So there.
EXAMINATION
BY MR. COLE:
Q Other than the discussions with Mr. Gray that we've just discussed, were there ever any other times that Mr. Gray called you to inquire about RTC matters involving --
A Absolutely not. Is this Mr. Cole?

26

Q Yes, sir.
A Okay. I just wanted to know.
Q I'm sorry.
A Never again. No.
Q So during your entire tenure at the RTC, that was the only time you received an inquiry?
A Yes. I met him several times after the phone call. And we never discussed it.
Q Had anyone else from the White House ever called you about an RTC matter involving a failed thrift?
A Not regarding a failed thrift. The President and I talked about funding constantly.
Q Yes, sir. And that's why I wanted to draw that distinction between general funding matters and failed institutions.
A Yes. Well, I hope you all have a nice day.
MR. COLE: Thank you, sir. As Mr. Bartolomucci said earlier, we appreciate you making yourself available and we will review this and we'll let you know as to whether or not there's any need for you to come here for a hearing.

THE WITNESS: I want to close the record by asking Mr. Gingrich to bring me back to Washington.

MR. COLE: Okay. I'll leave that one to Mr. Bartolomucci.

MR. BARTOLOMUCCI: Well, he's on the House side and we're Senate, so it might be tough for us.

THE WITNESS: I like Washington. And I like public service. I went there three times. I was your Postmaster.

MR. COLE: I understood that.

THE WITNESS: And I still run the drug program that Bush put me in. I'm chairman of the board for that for seven years.

MR. COLE: That's certainly important work.

THE WITNESS: Thank you all for much.

MR. BARTOLOMUCCI: Thank you, sir.

MR. COLE: Thank you very much.

(Whereupon, at 10:30 a.m., the deposition was concluded.)

ALBERT V. CASEY

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, PATRICIA A. ZUBER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Patricia A. Zuber

Notary Public in and for the
District of Columbia

My Commission Expires FEBRUARY 14, 2000

DEPOSITION OF STEVEN D. IRONS
IN RE: S. RES. 120

FRIDAY, NOVEMBER 3, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of STEVEN D. IRONS, called for examination pursuant to notice of deposition, at 10:03 a.m. in Room 534 of the Dirksen Senate Office Building, before CARMEN BUNCH, a Notary Public within and for the District of Columbia, when were present:

LOUIS J. GICALE, ESQ.
Majority Deputy Special Counsel
RICHARD BEN-VENISTE, ESQ.
Minority Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

PAUL J. FISHMAN, ESQ.
ROSS WIENER, ESQ.
ANDREA M. SIMONTON, ESQ.
U.S. Department of Justice
Tenth Street & Constitution Avenue, NW
Washington, DC 20530
On behalf of the Deponent.

APPEARANCES

ROBERT J. BITTMAN, ESQ.
JOHN D. BATES, ESQ.
Associate Independent Counsel
Office of Independent Counsel
Suite 490 North
1001 Pennsylvania Avenue, NW
Washington, DC 20004
On behalf of the Deponent.

ALSO PRESENT: TIMOTHY P. MITCHELL

CONTENTS

WITNESS	EXAMINATION
Steven D. Irons	
by Mr. Gicale	4
by Mr. Ben-Veniste	197
by Mr. Gicale	312
by Mr. Ben-Veniste	327
by Mr. Gicale	330
by Mr. Ben-Veniste	331
Errata	6943

PROCEEDINGS

Whereupon,

STEVEN D. IRONS

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. GICALE:

Q Could you please state your name for the record.

A My name is Steven D. Irons.

Q Your present business address?

A 10825 Financial Parkway, Suite 200, Little Rock, Arkansas 72211.

Q And that's care of the Little Rock office of the FBI?

A Yes, sir.

Q Your present position?

A I'm supervisory special agent for the FBI.

Q Assigned to the Little Rock office?

A Yes, I am. I'm detailed to assist the

5

Independent Counsel in Little Rock.

Q Mr. Irons, this deposition today is being conducted pursuant to Senate Resolution 120. The resolution establishes a Special Committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, Capital Management Services, Inc., the Arkansas Development Finance Authority and other related matters.

Section 1(b)(2)(c) and (d) of Senate Resolution 120 authorizes an investigation and public hearings into whether the Department of Justice has improperly handled RTC criminal referrals relating to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation and also whether or not the RTC employees have been improperly prevented, restrained or deterred in conducting investigations or making enforcement recommendations relating to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation.

This will be the focus of today's

6

deposition. You were requested to testify a number of weeks ago, and it's our understanding that through some discussions with the Independent Counsel's office, there was an agreement for you to testify today and a letter was sent to the Committee outlining the areas in which there's some agreement as to what you would testify; correct?

A That's my understanding also.

Q You're here pursuant to that agreement and understanding; correct?

A Yes.

Q This deposition is in advance of a public hearing which will occur in November. It is possible you may testify at that hearing. We will be asking you a series of questions. You are obviously testifying under oath. If you do not understand a question, let us know and we will rephrase the question.

The stenographer will prepare a record of questions and answers. The deposition will be treated as Committee confidential until the commencement of the hearings. Prior to the hearings,

7

you will receive a letter from the Committee telling you you may come to the Senate to review the transcript of your deposition and make note of any corrections for transcription on an errata sheet.

If you are called to testify at public hearing, you will be permitted to have a copy of your deposition transcript four days in advance of your testimony. You may be represented by counsel. I note today that you -- that Mr. Bates from the Independent Counsel's office is here, Mr. Bittman is here, Independent Counsel's office. Mr. Sgro is here from the Department of Justice on behalf of the Department of Justice.

MR. SGRO: And Andrea Simonton is here from the FBI.

THE WITNESS: Can I ask a question?

BY MR. GICALE:

Q Yes.

A You said I have an opportunity to come up and review this for errata. I'm not assigned here. I would like the representatives from the Office of Independent Counsel to be able to review that for me

8

in my absence.

MR. BEN-VENISTE: Actually, we could probably accommodate you by sending you a copy directly.

THE WITNESS: That would be great.

MR. GICALE: I believe we could make some arrangements to do that.

MR. BEN-VENISTE: Since it is anticipated that if you were to testify, it would be two weeks from now, we would probably be able to get you the transcript by Friday of next week.

MR. GICALE: I would think so. I would think so.

BY MR. GICALE:

Q Objections to the form of questions will be noted for the record today. Counsel may object on grounds of privilege or relevance. The Committee chairman may rule on objections where the witness refuses to answer a question. And of course, as I stated earlier, you are here pursuant to an agreement and understanding worked out between the Independent Counsel's office and the Committee's Majority and

9

Minority staff.
A I understand that there is an agreement, and I believe I generally understand what it is but of course I will defer to these guys that drafted the agreement to interject if they think it's necessary.
Q I understand. Do you have any other questions at this point?
A No.
Q Now, are you aware of the Committee's document request to the Department of Justice with respect to documents related to this matter?
A I'm aware that document requests have been made.
Q And have you searched for responsive documents, notes, reports and memoranda pursuant to that request?
A I don't believe I have because everything I have is part of the pending investigation.
Q Well, to the best of your knowledge, responsive documents that have been requested, have they been produced to the Committee?
MS. SIMONTON: Excuse me a minute. In all

10

of our correspondence, we have made clear that the FBI did not search or cause any of the persons detailed to the staff of the Independent Counsel's office to search for responsive documents. Therefore, although the Little Rock office was in effect searched for what still remained in the FBI Little Rock office, no person detailed to the staff of the Independent Counsel's office was requested to search for documents, nor were any documents that were in the possession of the Independent Counsel or persons detailed to his staff produced or described by the FBI to the department or to this Committee.
MR. GICALE: So the records we have are just -- to clarify that, and I believe this has been stated at some earlier point in time records that the Department of Justice had on its own prior to the Independent Counsel taking over?
MS. SIMONTON: I'm sorry. I didn't understand that.
MR. GICALE: These are -- the records that we received, then, are records that the Department of Justice had that were not in the possession of the --

11

strike that.
Mr. Sgro, the records we have are records that were in the possession of Department of Justice.
MR. SGRO: Prior to the announcement of the Attorney General on January 12 that an independent -- regulatory Independent Counsel would be appointed in this matter.
MS. SIMONTON: Except for if those records were subsequently turned over to the Office of Independent Counsel and therefore --
MR. SGRO: In their entirety.
MS. SIMONTON: Or the FBI had records in its possession prior to the appointment of the Independent Counsel that subsequent to the appointment of the Independent Counsel were turned over, either partially or entirely.
There may be notes. There may be -- there are notes. There are official files. Those were not produced because they're currently in the custody of the Independent Counsel. Anything that we have now that we had prior to the appointment of the

12

Independent Counsel we searched for.
MR. BEN VENISTE: Did that answer your question? Prior to the appointment of the Independent Counsel by our letter request, because now because of the interesting machinations of this Committee, have been reduced to a subpoena have been produced.
MR. BATES: I don't know what subpoena you're referring to. There is no subpoena to the Office of the Independent Counsel for any records the Independent Counsel's office has, which would include any records of Mr. Irons's that are part of that investigation and in those files. Your subpoena and document requests have been to the Department of Justice and the FBI for any documents they have, and Mr. Sgro and Ms. Simonton can speak to that and I believe they have.
Mr. Irons has not searched Independent Counsel files for any documents because that's neither his responsibility nor is there a document request to the Independent Counsel beyond an informal discussion that I have had with representatives of

13

the Committee that is ongoing as to one small category of documents that Mr. Irons again does not have a personal responsibility for dealing with.

MR. BEN-VENISTE: So in directing the question to the Department of Justice and the FBI representatives, is it the case that all of the documents to your knowledge that were once in the possession of the Department of Justice but are no longer in the department's possession because they have been at some point transmitted to Independent Counsel? Covering the time period and the subject matter reflected in our original document request, which has been supplemented by a subpoena, referring to those documents, can you say that they have all been turned over?

MR. SGRO: The documents in the possession of the Department of Justice for the period up until January 12, 1994, anything currently in the possession of the Department of Justice has been searched, and responsive documents have been produced pursuant to the caveat that the Independent Counsel had reviewed them and permitted us or suggested that

14

we do in fact produce those documents.

MS. SIMONTON: Just to clarify, I know, for example, that the Little Rock office, and we've made this clear in conversation, the Little Rock office had an official FBI file on Madison Guaranty prior to the appointment of the Independent Counsel. It's an FBI file. That file was turned over to the Independent Counsel. We have not produced documents from that file because it's not in our custody; it's in the Independent Counsel's custody. And I know that's been made clear in various memos we've sent to the department, and I believe the department -- my recollection is the department sent a letter to this Committee during the first production that said --

MR. SGRO: In fact, in response to the subpoena that you received yesterday, that was included in the subpoena, in our response to the subpoena.

MR. BEN-VENISTE: The letter was.

MR. SGRO: Yes.

MR. BEN-VENISTE: But the documents were not?

15

MR. SGRO: No, the reference to the fact that documents from the Little Rock FBI that now are in the custody and control of Independent Counsel were not produced.

MR. BEN-VENISTE: So it's clear that to the best knowledge of the lawyers here present, there are documents relevant to the subject matter of our inquiry which have not yet been produced?

MR. SGRO: They are not in the custody of the Department of Justice or in the custody of the FBI.

MS. SIMONTON: The Independent Counsel has custody of documents that have not been produced.

MR. BEN-VENISTE: And they have not been returned to you for production?

MS. SIMONTON: That's correct.

MR. SGRO: I cannot speak to whether they are responsive or not because I don't know what the documents are.

MS. SIMONTON: Well, based upon our indices search and the fact that there is an entire file relating to Madison Guaranty, at least one, I think

16

it's clear that if those files had not been turned over to the Independent Counsel and if they had remained in the custody of the department, then they would be responsive.

I mean, when you say "responsive," I'm talking about within the -- in scope as opposed to obviously if the subpoena is directed to me and I don't have it, then I can't say that there are responsive documents that haven't been turned over.

MR. BEN-VENISTE: Right.

MS. SIMONTON: But if you're talking about the scope of what you asked for, does the Independent Counsel have documents, then the answer to that is yes.

MR. BEN-VENISTE: Kind of if we asked you for your long distance phone records and if you didn't have them at home and they were in the possession of the phone company, you're not saying that you've gone out and asked the phone company for them?

MS. SIMONTON: Exactly. That is an incredibly good analogy, except for the fact that in

17

our response to the subpoena, we pointed that out and we said the Independent Counsel objects to turning them back to us.

MR. BEN-VENISTE: I understand that that's one piece of unfinished business that the Committee will need to deal with. Go ahead.

MR. BATES: That I will add has nothing to do with Mr. Irons being here today and if we could get on with Mr. Irons's deposition, it would probably get us through the day faster.

MR. BEN-VENISTE: Hopefully because of what has been discussed here, Mr. Irons is not deprived of and we are not deprived of information that might bear on his testimony. We will see whether that's the case as we go through.

BY MR. GICALE:

Q Now, other than representatives of the Independent Counsel's office, did you speak to anyone other than those counsel prior to your deposition today with respect to the substance of your testimony today?

A Well, I conferred with Andrea Simonton, who

18

is present here today, and the inspector in charge of the investigation generally concerning possible topics of testimony.

Q Anyone else other than that?

A My wife knows I'm coming here.

Q Mr. Irons, when did you first hear of an RTC criminal referral relating to Madison Guaranty or Whitewater Development Corporation in 1992?

A I first heard that the RTC was conducting investigation to determine whether a criminal referral would be sent in late March or early April of 1992.

Q And how did you hear about that?

A I don't recall how I heard about it first, but I know that my early contacts regarding that included a telephone conversation with Jean Lewis of the RTC. She is an investigator for the RTC. And I learned either prior to her visit to the Little Rock office of the FBI or upon her visit to Little Rock FBI or shortly after her visit that she was interested in examining Madison Guaranty Savings & Loan.

19

Q Did she tell you what had prompted her interest in examining Madison Guaranty?
A She advised me that her superiors had redirected her to examine Madison Guaranty Savings & Loan.
Q Now, other than her telling you that, did you -- did she ask for any assistance from your office at that point with respect to this examination?
A When she visited our office, it was to confer with an agent who had worked a previous investigation of Madison Guaranty Savings & Loan that had resulted in the indictment and trial of Jim McDougal and some other subjects, and she wanted to confer with that agent, I believe for his thoughts or guidance as to background, before she began her RTC investigation.
Q Who was that agent?
A Gary Aaron.
Q How do you spell that?
A A-a-r-o-n.
Q So did she discuss this matter with

20

Mr. Aaron?
A He has told me that she did.
Q You weren't present for that?
A I wasn't present. She has also told me that she did.
Q Now, to go back to the earlier prosecution of Mr. McDougal and Madison, were you involved in that at all?
A No, no, I wasn't. The indictment occurred prior to my arrival in Little Rock, and I believe the trial actually concluded before my arrival. If not, the trial was ongoing when I was moving in.
Q So Mr. Aaron would be the person most familiar -- was the agent most familiar with the facts of that indictment?
A That's right.
Q Now, did you have any further involvement with Ms. Lewis or this referral at this point in time after that?
A In March or April or after that?
Q Well, in March or April.
A I may have had a conversation with

21

Ms. Lewis when she asked me if I knew whether the records for Madison were stored in a warehouse in the Little Rock area, and because I remember some conversation about the records being stored there and that she intended to go there and review records, I think that was the next conversation I had with her.

Q What is the next contact you had with respect to her investigation?

A With her?

Q With her or with anything the FBI did with respect to this.

A So I understand, are you asking me contacts with the RTC, Jean Lewis or people at the RTC, or --

Q Well, what is the next thing that, either conversation you had with respect to her investigation of this referral or her or any representative of the RTC or with your supervisors or any internal investigation that you proceeded to do at this point.

A I did not conduct any internal investigation. I believe that -- and I can't be certain of the order of these conversations. It's a

22

memory I have right now of things that happened in this general time frame. But I believe I had contacted RTC and asked if it looked like a referral might come out of what they were doing, and I was told that there might be one.

Q Now, did you inform your superiors at that point in time that this might occur?

A I'm not sure if I did or not.

Q Now, this would have been March or April; correct?

A This would have been April, probably, first part of April.

Q Do you know who the person you contacted was?

A Clark Walton.

Q At RTC, Clark Walton?

A Yes.

Q Then what is the next thing you recall occurring with respect to this referral?

A I'm sorry?

Q Perhaps to speed this up, did anything happen between that period of time and August of

23

1992?
A There may have been because of normal contacts you'd have -- that I would have as a supervisor with RTC or RTC being around the office asking about other investigations we were conducting that results from the referrals that I could have talked with, but I don't have any recollection right now of anything that stands out in my mind, other than I was aware they were looking at Madison and that it seemed possible a referral might be made.
Q When you say "they," would it be someone in addition to Ms. Lewis at that point in time?
A The people I talked to were Jean Lewis and Clark Walton, and at that time those were the only people from RTC I had spoken to about this, that I recall.
Q Did there come a point in time in August of '92 when you obtained some further details with respect to the investigation of this potential referral from Ms. Lewis?
A Yes, I believe it was in August that the Little Rock FBI office, and I believe all the other

24

FBI offices received a communication from our headquarters that dealt with projecting manpower burned in the area of FIRREA cases, bank fraud cases, and as a result of that, in trying to determine what our projected manpower would be in failure cases, I contacted Jean Lewis of the RTC, may have been August 26, and asked her if she thought a referral would be made likely on Madison.
Q What did she tell you?
A She said there would be one made, would be made very shortly. She may have said -- actually, I think she told me by the 31st of August is what she was shooting for.
Q Did she describe the nature of the allegations that would be included in this upcoming referral?
A I can't recall if she described the nature. She described for me some of people that would be mentioned as suspects or witnesses.
Q And could you give us the names of those people who were mentioned as suspects or witnesses?
A I believe Jim McDougal, Susan McDougal and

25

Jim Guy Tucker, Bill and Hilary Clinton, and I'm not sure without referring to something what else she said then.

Q Now, as a result of your conversation with her, did you --

MR. BEN-VENISTE: Excuse me. Is there something that you had in mind that you might want to refer to?

THE WITNESS: She may have named other people.

MR. BEN-VENISTE: When you say "without referring to something," you couldn't give any more names right now, is there something that would help your recollection?

THE WITNESS: Well, I believe as a result of the communication I got from our headquarters, I prepared a response.

MR. GICALE: I'm about to get to that.

THE WITNESS: In the response I believe I may have named more or different people. I'm not sure.

BY MR. GICALE:

26

Q I'm going to show you what's marked for identification as FBI Bates number 00001529 through 1533. This is an Airtel or what's marked as an Airtel dated August 26, 1992 to the director of the FBI from the SAC Little Rock.

(Witness reviewed the document.)

A I've reviewed that part of the document that I believe responds to your questioning.

Q Now, did you assist in preparing this, or in fact, did you prepare this?

A I prepared this. These are my initials as the person who prepared it at the bottom and also the person that typed it.

Q And you prepared this as a result of your conversation with Jean Lewis and your intention of notifying the FBI headquarters about assistance in terms -- manpower assistance in terms of upcoming cases; correct?

A Yes. As this document reflects on page 1, when I reference paragraph, Airtel, this document is in response to the questions raised in the document identified. And in order to provide as complete a

response as possible, it notes on page 2 that a contact was made with RTC and the description of that contact is contained in there.

Q Now, does the document refresh your recollection with respect to the names of people who she identified as targets or witnesses in this upcoming referral?

A Yes, it does.

Q And as a result of refreshing your recollection, are there additional names there that you have not previously given to us?

A I believe earlier when I listed names, that I did not mention Maurice Smith, Steve Smith and R.D. Randolph.

Q Now, did she also describe the type of activity that she was concerned with at that institution, type of illegal activity?

A Yes.

Q What was that?

A She described nine shell corporations with accounts at Madison Guaranty and advised there appeared to be check-kiting activity between the

accounts and that a corporation known as Whitewater Development was involved as recipient of some of the funds.

Q Now, after sending this information to the director's office in Washington, what is the next thing or what did you do as a result of receiving this information after sending this to Washington?

A Well, at this time I can't say if it would have been after the date this went out, which appears to be August 27 or August 26, but around that time period, I advised the assistant special agent in charge, special agent in charge in Little Rock of what I had learned about this potential referral, and I believe that I may have had conversations with either the First Assistant United States Attorney in the Little Rock United States Attorney's office or the United States Attorney, advising them that we may be receiving a referral described as in this communication in the near future.

Q Now, when you talked to the First Assistant or U.S. Attorney in Little Rock, did they indicate to you that that was the first they had heard of it?

29

A I'm not positive what they indicated. From my earlier conversations with Agent Aaron and other agents on the squad, I had been told that Jean Lewis had also been in contact with Assistant United States Attorneys during the time period late March, up and to, I would assume, this August 31. They may have indicated that they were aware that RTC had been looking at this. I'm not sure, but I was calling them to make sure they were aware that it would be coming.

Q Do you know which assistants from that office had been notified by Jean Lewis that she was working on these referrals in March and April of 1992?

A Well, I'm not certain because I don't recall that Jean Lewis told me, but I believe that it would be Sandra cherry and Ken stole, both of whom were involved in the prior prosecution of Jim McDougal.

Q I'm showing you what's marked for identification as Bates number 963. It's a memorandum dated August 27, 1992 from Steve Irons to

30

the SAC Little Rock.

(Witness reviewed the document.)

A I've reviewed that.

Q Does that refresh your recollection as to the memorandum that you sent to the SAC Little Rock with respect to your -- the information you obtained from Jean Lewis on the prior date?

A Does this reflect my recollection about this previous document? Is that your question?

Q Well, about your conversation with Jean Lewis on the prior date.

A There is additional paragraph in here of information in this memo that's not included in the Airtel that you just showed me.

Q And the additional paragraph refers to Whitewater Development account receiving 29,000 to $30,000 in checks kited from shell accounts; correct?

A That's correct.

Q That was information you received subsequent to sending out the Airtel from Washington to Jean Lewis?

A No, I received this on 8-26. I

31

telephonically contacted Jean Lewis -- this memorandum was typed on the 27th, which was a day later, but I received -- this is the same information I received on the 26th and then in this previous document you showed me a reference a contact with Jean Lewis on 8-26. I believe that's the same contact, the contact referenced in the memo and the contact referenced on page 2 of the Airtel is the same contact.

Q But for some reason, you added these references to Whitewater in this memorandum?

A That's correct.

Q Why is that?

A Internally I wanted to make a record of what I had discussed with the ASAC and SAC, and for previous and for future reference, to be aware that this might be an allegation or suspicion that was listed in the referral.

Q Well, what was the significance of Whitewater Development Corporation?

A Well, Whitewater Development Corporation, again is explained on page 2 of the Airtel, according

32

to Jean Lewis, was owned 50 percent by James and Susan McDougal and 50 percent by Bill and Hilary Clinton.

Q At that point in time, Bill Clinton was candidate for President of the United States; correct?

A Correct.

Q And therefore you thought that this was a significant development -- significant allegation or piece of information that should be -- your SAC should know about?

A Correct.

Q Now, were there any -- withdraw that.

As a result of your discussion with either the first assistant or the U.S. Attorney with respect to this referral, did you agree to take any action with respect to it or just to wait until you received the referral to take any further steps?

A Well, I'm sure that until the referral was received, there really weren't any steps we could take until we saw the specifics of the allegations, so I'm sure that I did not intend for the FBI to take

any action on my squad, and I don't believe the U.S. Attorney's office would have taken any action either.
Q Did you have any conversations with any officials at FBI headquarters in Washington with respect to the anticipation of this referral and the significance of references to Whitewater Development Corporation?
A I didn't have any conversations with anybody at headquarters at that time.
Q Do you know whether Mr. Pettus was the SAC at that time?
A That's correct.
Q Do you know whether or not he did?
A I am now of the understanding that he did not at that time. I didn't know at the time this memo was prepared if he did or not. I became aware -- as events progressed in the handling of the referral, I became aware of when he did have a conversation with headquarters. I don't know if that was his first conversation. I believe it was, but you could ask him.
Q When did you find out that he did have a

conversation with headquarters?
A I don't know when his first conversation was. I know he had a conversation, I believe on October 9, and I believe it's possible he could have had a conversation on October 6, but I'm not sure if the 6th was the first conversation he had. I believe it was. I'm not sure if there were conversations between the 6th and the 9th.
Q Did you participate in those conversations, October 6 and October 9?
A The conversation that I'm aware of on October 9, I sat in Mr. Pettus's office while he spoke on the telephone to headquarters. It was not a speakerphone so I only heard his side of the conversation.
Q Who did he say that he was speaking to?
A Larry Potts.
Q And the October 6 conversation?
A I don't know. October 6 I believe is -- October 6 I know, based on my recollection, is the date I received a telephone call from headquarters and I would have relayed that information to my ASAC

35

or SAC, assuming that he was in town. The reason I say he may have had a conversation as early as the 6th is he may have responded to headquarters on the 6th. I don't know if he did or not.

Q Who did you receive a call from from headquarters on the 6th?

A Supervisory agent from the bank fraud unit, Kevin Kendrick.

Q Now, with respect to this referral, were you -- you prepared the Airtel and that memorandum, and I notice for instance the memorandum went directly to the SAC. Was there someone -- were you answering directly to the SAC at that point or did everything you have at that point go through the ASAC?

A Well, all memorandum -- with few exceptions, memoranda to a file in the FBI are addressed to the SAC field division. Since he is in overall charge of the field division, that doesn't mean that I did not consult with the ASAC.

Q That was Mr. Whitehead?

A Don Whitehead.

36

Q Did you consult with Mr. Whitehead with respect to this matter in August or September?

A I believe I did.

Q Do you know whether or not he had any conversations with people in Washington at the FBI?

A I don't know. I don't know of any conversations. From conversations I've had with him, I don't believe he had conversations before October 6 either, but I'm not sure.

Q Now, other than the Airtel on August 26, 1992, do you know of any other communication that your office in Little Rock had with FBI headquarters in Washington between August 26, 1992 and October 6, 1992?

A I'm not aware of any.

Q Now, on September 1, 1992, your office received a copy of the criminal referral; correct?

A I thought it was the 2nd, but it very well could have been the 1st.

Q I'm going to show you a document marked for identification as document 2286 through 2287. Can you identify that document? There is a written date

up in the upper right-hand corner, dated 10-9-92.
(Witness reviewed the document.)
A I have reviewed the document.
Q Would that be a document prepared by your office in Little Rock or some kind of internal document prepared by FBI headquarters?
A I believe that this document was prepared by Jane Erickson, supervisor at FBI headquarters in 1993, would be my guess. I can't be certain. This information is very similar in almost all respects to a document that I believe I may have prepared around the time of this date up here, 10-9-92, but there are references in here that SSA Steve Irons advised this, and SSA Irons advised that. That would not have been included in the document when I prepared it.
Q Now --
A So I believe someone has taken a document --
MR. BEN-VENISTE: Did you misspeak? 10-7 or 10-9-92?
THE WITNESS: I read this as a 9.
MR. BEN-VENISTE: It looks like a 7 on

mine. Interesting. We got a different document with the same numbers. Somebody made the 7 into a 9, is what happened. Take a look at this.
THE WITNESS: Do you want to identify this for the record, or should I just --
MR. BEN-VENISTE: The Bates number, FBI 2286.
BY MR. GICALE:
Q Dated 10-7-92.
THE WITNESS: This says 10-7-92.
MR. BEN-VENISTE: Take a look at the one you were just looking at and see whether the 7 on the original one appears to be changed into a 9.
MR. PIERSON: I would just correct the record. The "original one" is a term you're using. Nobody knows which is an original one.
MR. BEN-VENISTE: The original one that you were looking at that you've identified as 10-9-92 appears to be the same document with the 7 turned into a 9.
(Witness reviewed the document.)
THE WITNESS: This apparently is not, or

39

there is a difference in the documents with this background notation, C-1 and C-2.

MR. BEN-VENISTE: Right. But aside -- those are markings that we put on it for our own internal purposes. But other than that --

THE WITNESS: The document I was first handed that says 10-9-92, I'm not a documents examiner, but it appears to me like there is writing on here that is overwriting or what appears to me it's a bad copy, someone has tried to fill in what the date is. So I don't know if someone has turned the 7 into a 9. I think what may have happened is somebody had a bad copy and tried to fill it out on the day it was, but I have no way of knowing because I didn't write this.

BY MR. GICALE:

Q Is it a document that you eventually reviewed at some point in time?

A No, I think I prepared the source document that was used to prepare that document. I believe I prepared this around October of '92.

Q In any event, after having reviewed it,

40

does it refresh your recollection at all as to the date that your office received the referrals, whether it was 9-1-92 or 9-2-92? If it doesn't help you, we can go on to another document.

A I'm sorry, since it looks to me like somebody else prepared that, even though it may have been from something I wrote, they could have gotten the date wrong. For some reason I'm thinking 9-2 but that could very well be because I received a referral on 9-1 late and took some action to do something on 9-2. I'm just not sure.

Q In any event, on either 9-1 or 9-2-92, and we'll get to your memorandum of 10-7-92 later, your office received a copy of the referral. Did you receive copies of the exhibits attached to the referral at that point in time?

A No.

Q What, if anything, did you do with the referral that you received? And I'm going to show you what's marked for identification as 6695 through 6714.

(Witness reviewed the document.)

41

A I've reviewed the document. I believe you asked me what I did with it.
Q Well, does that look like the copy of the referral you received in September of 1992?
A Yes, I believe this is the referral. This is a bad copy, but that's the referral.
Q What did you do with it?
A I read it, I advised the ASAC and/or the SAC about it, and starting with this document and continuing on for some time, I maintained this when I was not using it in my office safe, and I am sure I also would have made contact with the United States Attorney's office to see if they received their copy also.
Q How soon after you received it did you have contact with the U.S. Attorney's office to see whether or not they had received it?
A I'm not certain of the exact date, but I suspect -- I believe it probably was the same date.
Q And did you confirm that they indeed had received a copy of this referral?
A Whichever date it was I talked to them, I

42

believe I did confirm that they received a copy of the referral.
Q Did they indicate to you whether or not they had received the exhibits that were -- that went along with that referral?
A I'm not sure they did, and I'm not sure that I was aware at that time that there were exhibits with the referral.
Q At this point, did you send a copy of this referral to FBI headquarters in Washington?
A No.
Q Did you discuss possibly doing that with either the ASAC or SAC?
A Yes.
Q And who did you discuss it with?
A I believe probably both, but for guidance and a decision I looked to Mr. Pettus, the SAC.
Q And did you suggest that it should be sent to headquarters or what was the -- how did the discussion go?
A I'm not sure exactly how it went. I think I would have, with the SAC I would have asked -- I

think I asked if he wanted me to prepare something.
Q What did he tell you?
A I don't remember his exact response, but the general response had to have been negative because I did not prepare anything.
Q Did you have any further discussion of whether or not Washington FBI should be notified of it at that point, with Mr. Pettus or the ASAC, Mr. Whitehead?
A Yes, I spoke with Mr. Whitehead.
Q What was the discussion? What did you say to him and what did he say to you about whether or not it should be forwarded?
A I advised him that this referral was there, and I think -- I don't know if it was before or after, but I told him the SAC's decision was that we not notify headquarters.
Q What was his response?
A His response was that it was the SAC's decision to make.
Q Did he express an opinion about whether or not this document should have gone to headquarters at

that point?
A Well, this -- as I alluded to earlier, from the date of this receipt and even when we became aware that it was coming, there had been discussions between myself and the ASAC and the SAC that this would be treated with strict secrecy and on a need-to-know basis, and because of that and because I knew the SAC was free to make whatever communications to headquarters he wanted without my assistance, and acceding to his views on the secrecy needs, I didn't raise the topic again with the SAC.
Q But when you discussed strict secrecy, need-to-know basis, that included not giving a copy to the FBI headquarters in Washington?
A Well, it wasn't that we felt like we couldn't give it to headquarters in Washington, I don't think, but we had not yet had a -- I think at the time of that discussion, that may have occurred before we were able to sit down, FBI management, and meet with the United States Attorney's office management. And from previous conversations, they had requested that we not take any action until we

had joint consultation on how to approach this referral.

Q Who had requested that?

A Chuck Banks.

Q When you say "previous conversations," occurring when, before receiving the referral or just after?

A Could have been either or both, but it's my understanding from conversations with Mack Dodson and/or Chuck Banks that because of the fact that Bill and Hilary Clinton were mentioned in this referral and because of the timing in relation to the election, that we should carefully examine the contents of the referral and judiciously decide what steps should be taken.

And as of the time you're asking me about the conversation with Mr. Pettus about whether to notify headquarters, I don't believe that the meeting had occurred, and the fact that we did not have a prosecutive opinion to relate to headquarters and had not gotten the U.S. Attorney's office's views may have entered into his decision, but you'll have to

ask him.

Q Did Banks or someone from his office indicate that they wanted you to defer doing anything on this until you all had a chance to sit down and talk about it? Is that the case?

A I don't know the exact wording, but I believe the expression that Chuck Banks used was not going off half-cocked, not doing anything precipitous that would result in unfair publicity. In a case of this type, one of the first steps that you take is to issue a grand jury subpoena to the RTC or to other entities for records which would tend to make this somewhat in a public domain.

Q And you discussed at that early juncture whether or not that step should be taken?

A I don't know if we discussed that. I certainly was aware of that, and certainly I knew that there was very little action that we could take other than reviewing this referral until we got a prosecutive opinion and had subpoenas issued.

Q So was it fair to say at that point in time, the U.S. Attorney indicated that to get a grand

47

jury subpoena, you would have had to have the cooperation of the U.S. Attorney; correct?
A Chuck Banks wanted no action taken until we had a chance to jointly meet, management of FBI and United States Attorney's office, to discuss what action should be taken.
Q Did "no action taken" --
A By "action," I mean -- I don't mean review of this, I don't mean internal suggestions, strategy meetings at the FBI. I'm talking about overt interviews, anything that would tend to disclose the fact that this referral existed.
Q But did the no-action include not sending a copy of this referral or information about it to headquarters in Washington?
A I'm not aware of any reference check points ever made to what we would tell Washington.
Q So you put it in your safe and basically you were awaiting an opportunity to meet with the U.S. Attorney's office and discuss the next step, is that it?
A That's it.

48

Q How soon after you received the referral did you meet with the U.S. Attorney or talk with them by phone?
A Well, I may have -- I don't know if I talked with them by phone about this referral in between the 1st or 2nd of September and the date of the management meeting, but it's my recollection as I sit here now that on September 23, there was a meeting between Chuck Banks, Mack Dodson, the SAC, I don't know if the ASAC was there or not, and the other supervisors in Little Rock and this was discussed.
Q You were present?
A I was present, yes.
Q Which other supervisors?
A It would have been, I believe, Larry Deaton and Don Kidd.
Q Was there anyone else that was present, like a documents examiner or some sort or some analyst of some sort?
A I don't recall an analyst being present.
Q Do you know why it took almost three weeks

to have this meeting with Mr. Banks?
A Today I can't tell you why it took three weeks. It could have been that either Mr. Banks or Mr. Pettus had travel schedules that conflicted with them both being available until the 23rd.
Q But in any event, pursuant to Mr. Banks's instructions, you agreed not to do anything further until you had this meeting, which did not occur until September 23, 1992?
A That's correct.
MR. BEN-VENISTE: Object to the form of the question insofar as "anything further" means anything other than what Agent Irons has previously described it to be.
THE WITNESS: Now I can't remember what you said.
MR. GICALE: Why don't you read it back.
(The reporter read the record as requested.)
THE WITNESS: That is correct. I would have relayed those instructions if I got them personally to the SAC. He may have gotten them in addition to me or he may have gotten them and relayed

them to me. I'm not sure as I sit here, but the SAC was in agreement with that course of action also, so we did not take overt investigative action prior to the meeting of, I believe, September 23.
BY MR. GICALE:
Q Now, was a copy of this referral given to the agent who you earlier identified that had been involved with the previous prosecution of Mr. McDougal?
A No.
Q Was there a reason for that?
A Well, we were not conducting an investigation at that time. The case wasn't opened, and the case had not been assigned to an agent.
Q So basically, the only people that knew about it at that point in time would have been yourself, the ASAC and the SAC?
A Actually, I don't think that's right. When I received the referral, I was reviewing it in my office, and I had two agents, one Gary Aaron, who I mentioned earlier as being the case agent on the previous case, and another agent come to my office

51

and advise me that they had heard that the U.S. Attorney's office had received a referral and were wondering if I had also received the referral, and I told them that I did have the referral and that they should not be concerned about it, and I asked them to maintain the confidentiality of the fact that we had received the referral.

Q Who was the other agent?

A Ron Wolfe, W-o-l-f-e.

Q Did they tell you how they knew that the U.S. Attorney's office had the referral?

A I'm not sure if they told me who they heard it from, but it was my understanding they heard it from an Assistant United States Attorney at the U.S. Attorney's office.

Q Do you know who that Assistant U.S. Attorney was?

A I don't know for sure.

Q Now, when you met with Mr. Banks on September 23, 1992, who from his office was present besides Mr. Dodson? Was it just he and Mr. Dodson?

A Those are the only ones I recall.

52

Q What was discussed at that point in time?

A The general nature of the referral was discussed, the fact that it named prominent individuals as either suspects or witnesses; in particular, the concern, the note was taken that Bill and Hilary Clinton were named. It was noted that a presidential election was upcoming and the pros and cons of potential courses of action were discussed.

Q Was there discussion about each of your respective agencies notifying -- your agency notifying FBI headquarters in Washington and DOJ, U.S. Attorney's office notifying Department of Justice in Washington?

A I don't recall that as being part of the discussion. It could have been but I don't recall it.

Q At that point in time, did either your office or the U.S. Attorney's office have a copy of exhibits that were part of this referral?

A Well, I know that the U.S. Attorney's office, because I subsequently saw them, received exhibits at the same time they received the referral,

so that would have been November -- I'm sorry, September 1 or whatever date it was received. This meeting, my recollection is, was on September 23, so they would have the exhibits from the time they got the referral.

You know, it could have been that the U.S. Attorney's office made reference to the exhibits and the fact that they did look through them at that meeting, but I don't have a clear recollection of that today.

Q Did they have the exhibits in the meeting and did they give you an opportunity to review them prior to having your discussions at that meeting?

A I don't recall the meeting being -- I don't recall the exhibits being examined or present at the meeting.

Q How long was the meeting?

A I don't recall. From the attendees, which would be Banks, Dodson from U.S. Attorney's office, SAC, maybe ASAC and the headquarters, Little Rock headquarters, FBI supervisors, I believe that this meeting concerned possibly not only this referral but

other matters of mutual interest with our offices, because we had periodic meetings to discuss cases that were under investigation by the FBI and being prosecuted by the U.S. Attorney's office.

Q At that point in time, did you discuss specifics with respect to the referral, the specific allegations and the merits of them?

A I don't recall the specifics. I don't recall what we discussed back in 1992 specifically about this referral, except I believe that it was noted, both by the FBI and by the U.S. Attorney's office, that there did not appear to be anything in the referral that indicated an ongoing crime of a nature that required immediate action to avoid harm to somebody's safety or that would be a bar to a future investigation.

And let me explain that to give you a little background on thinking of FBI certainly at this point. Any time information about public figures is received, I believe it's handled very carefully, and there was a cognizance that this information was being received during the late months

55

of a presidential investigation.
MR. BEN-VENISTE: Presidential --
THE WITNESS: Election, excuse me.
BY MR. GICALE:
Q The buzzer.
(Laughter.)
A If it had been the mayor of Little Rock, if it had been a representative, the same logic would have applied, even though obviously the office of the President would be viewed as more sensitive than those.
But at any rate, absent some occurring event, and I'm not talking about this case, but I'm giving you an example. If you had a case where you got information that a bribe was being paid to a candidate or politician or something was going to occur between the time you received the allegation and the date of an election, then you would have to seriously consider taking action and doing overt investigation because the opportunity to gather good evidence in that crime would diminish once it had occurred and time had passed.

56

The FBI, because, and just for common sense reasons and I think to avoid abuse, in any type of investigation where it's a corruption allegation or public official is involved, if you can wait until after an election occurs that might be affected by public disclosure of investigation, then the policy I believe or the practice is to wait until after the election occurs.
In this case, based on what we discussed at that meeting, there was nothing in this referral that suggested that action was necessary in order to not diminish our ability to conduct an effective investigation later.
And I would point out that I'm sure we noted that this institution had failed several years previously and there had been a previous prosecution which may have constituted some double jeopardy problems even for violations that may have existed in the facts referenced in this referral, and there was no -- there was a common view that there was going to be no -- it would be of no detriment to any future investigation that might be decided on if action was

57

delayed until after the November 3 election.
Q Did the U.S. Attorney at that point indicate that it was his opinion that the information concerning the check-kiting was of possible interest at that point?
A I believe he did. The meetings -- if I haven't -- without a document, the time tends to run together in my mind, but I believe that -- I know at some point he did tell me that the check-kiting was of possible interest. It could have been on that date, but I'm not sure. It could have been that there was just a decision that there would be nothing done until after the November 3 election.
Q Well, not to quick forward on this, but I'm going to show you a document marked for identification as document number 985 through 996. And the cover sheet, this is a facsimile cover sheet to FBI headquarters dated 10-7-92, to the attention of Kevin Kendrick from FBI Little Rock. The originator's name is Steven Irons. Are you familiar with that document?
(Witness reviewed the document.)

58

A Yes. I have reviewed this document, and I'm familiar with it.
Q Now, this document was prepared, amongst other things, to summarize what occurred at your meeting on September 23, 1992, and I'm specifically referencing exhibit number 995; correct?
A This was prepared -- yeah, you're referencing -- you're looking at 995.
Q Right.
A This was prepared to provide a summary to headquarters of Little Rock's preliminary analysis of this referral.
Q And it references September 23, 1992 meeting; correct?
A Let me take a minute to read this part.
(Witness reviewed the document.)
Okay, I've read this. I'm sorry. Could you repeat the question you last asked me?
MR. GICALE: Can you read the question.
(The reporter read the record as requested.)
THE WITNESS: Yes, this does reference the meeting. As I stated earlier, it talked about a

59

meeting between the SAC Little Rock and supervisory staff with USA, and as I believe I already told you, Mack Dodson was present also. This cites an opinion of the USA, who is Chuck Banks.

BY MR. GICALE:

Q That the information concerning the check-kite was of possible interest?

A That's right. So in answer to your earlier question that I said I did not know, after reviewing this document that I prepared, this refreshes my recollection and the U.S. Attorney on that date did say he thought the check-kite was of possible interest with Lisa Anspaugh as a possible target, A-n-s-p-a-u-g-h.

Q Do you recall whether there was a discussion with respect to the diversion of loan proceeds of the loan that the McDougals had taken for their home?

A I'll have to take just a moment to review this entire document to see if I've referenced that in here.

Q Maybe I can direct your attention to 991.

60

(Witness reviewed the document.)

A Okay. I see here "in addition to the alleged check-kiting, the McDougals are alleged to have diverted the proceeds of their Madison Guaranty Savings & Loan home purchase and improvement loan."

So that was -- this document that I prepared indicates -- that's information we're providing to headquarters.

Q About the referral?

A About the referral. I can't tell from this document, and I don't have an independent recollection of whether or not this specific item was discussed on September 23.

Q Did the U.S. Attorney indicate at that point in time that the correct course of action was for him to have legal research conducted on statute of limitations in the various applicable bank fraud statutes and to complete an in-depth analysis of the voluminous exhibits ancillary to the referral?

A Yes.

Q Was it also agreed that a complete and factual determination of what had transpired in any

61

facet of the referral would take some time?
A Yes.
Q Now, what kind of time was discussed? How long did you agree it would take or estimate it would take to conduct such a review?
A Well, actually I don't believe that what I'm referring to in this document is a review. I believe that what I'm trying to advise them of in this document is that to determine to the satisfaction of the FBI and U.S. Attorney's office what had happened in relation to any of the allegations or suspicions that were named in the RTC referral, an investigation that might take some time would have to be conducted.
And I can tell you that I'm quite sure what we're talking about is that these types of investigations, financial investigations of failed institutions, take a long time. They can take a -- a year is not uncommon.
As I said, one of the first steps is to issue subpoenas. Many times the institution which has failed, the assets have been divided up and sold

62

off to other institutions, and just obtaining the records you need is a chore, because some records are now with another bank that's bought a loan portfolio. Other records are in storage.
And I believe that what I was trying to convey in this sentence is that in order to advise or form an opinion as far as prosecution, whether this -- whether crimes had occurred based on a standard that the U.S. Attorney's office would use for an indictment, that a lengthy investigation would be required.
Q So as to be clear, you were not talking about a two-week to six-week time period; you were thinking about something -- you were referring to something longer than that; is that correct?
A If the U.S. Attorney's office had authorized prosecution and we conducted full investigation, I would expect that it would take a minimum of a year.
Q Now, you distinguished between a review and an investigation, and is that because at some point in time, there was some kind of a review that was

63

done in an abbreviated time period with respect to this referral?

A Well, there did come a time when that happened. That's not why I drew the distinction necessarily. I'm not sure what the language you used was, but I wanted to make sure that you didn't think that this teletype was saying that this complete and factual determination of what transpired was something that we expected to occur over the next week or two, because all we could accomplish in the next week or month or two would be a review of what was in this referral.

So I was just delineating between the preliminary review you would do as to the referral, which would then give you guidance or you would use for guidance as to how to conduct any anticipated investigation, separate from the actual investigation.

The answer to the second part of your question, yes, there did come a time when the review that I was in -- there was an in-depth review of this referral.

64

Q And you were provided either copies of this exhibits or access to the copies that the U.S. Attorney's office had?

A I was provided access to those copies -- to those exhibits, access was granted at the U.S. Attorney's office, and I -- those were being kept and maintained in the U.S. Attorney's office safe also, so their security was apparently somewhat internally as far as protecting the confidentiality of this was similar to what the FBI was doing.

I went myself and financial analyst Gretchen Hall went to the U.S. Attorney's office to review these exhibits.

Q Now, when you left the meeting on September 23, 1992, what was the course of action that was agreed upon between your office and the U.S. Attorney's office?

A Well, the course of action was that the U.S. Attorney would have legal research conducted on statute of limitations on various applicable bank fraud statutes and complete an in-depth analysis of the exhibits attached to the referral.

65

Q Was that in-depth analysis to include your office or was that going to be independent of your own?
A As I read this, the United States Attorney wanted those exhibits to conduct the analysis in their office. They would be conducting the analysis.
Q Without your assistance?
A That's correct. If they had asked for it, we would give it to them.
Q Right. And was there a timetable agreed upon that they would complete their analysis?
A Not that I recall.
Q Was there some understanding as to what the FBI would do while you were waiting for them to complete their analysis?
A The FBI would do nothing.
Q And they would notify you -- the understanding was that they would notify you when they had completed their analysis?
A The ball was in their court. Without a positive prosecutive opinion and some guidance, there was no action that we could take, per our agreement

66

with them.
Q How long was the ball in their court?
A Well --
Q Well, what's the next thing that happened?
A The next significant event that happened regarding action taken by the FBI in the referral was a telephone call that I received from Kevin Kendrick on October 6 of 1992.
Q And what was the nature of that phone call? What did Mr. Kendrick say to you and what did you say to him?
A He asked me if we had received a referral on -- I don't know if he described it as being on Madison or naming Bill and Hilary Clinton, and I advised him that we had.
Q Was that the extent of the conversation?
A No, actually I believe that I first -- I believe I was in my car maybe and my secretary beeped me and told me that Kevin Kendrick from headquarters wanted to talk on me. I didn't know who he was. I had never spoken to him before. And I --
Q What was his title, by the way?

67

A Supervisory special agent in the financial institution fraud unit at FBI headquarters.

Kevin Kendrick told me that he had just left a meeting with some FBI officials higher than himself and some DOJ officials and that they had information that the Little Rock office had a, I think he may have said dynamite referral, sensitive because of the names I mentioned before, Bill and Hilary Clinton, and that we were just sitting on it.

Q Did he tell you who he was in the meeting with at the FBI or Department of Justice?

A He did at the time, but without -- you know, unless there's some document that would refresh my recollection, I couldn't say for sure who he said. Now, I know what the organizational chart is. I think I know who his superiors may have been, but I don't remember -- and at that time I was basically a pretty new supervisor, was not familiar with the names at headquarters and if he told me the names, they would have meant little to me. I would have just asked him are they higher than you or higher than me. And if they were, then I would note that.

68

MR. GICALE: Off the record.

(Discussion off the record.)

BY MR. GICALE:

Q Now, after he indicated to you that he had just come from a meeting where some discussion had occurred with respect to this referral and there was a belief that you were sitting on it or your office was sitting on it, how did you respond to him?

A Well, I can remember that I was very unhappy that he would characterize me as sitting on anything, and I told him that the United States Attorney was fully aware of this and that we were acting on the instructions of the United States Attorney and that he should tell Department of Justice that if they had a problem, that they should contact the U.S. Attorney's office.

I believe I also told him that my superiors in Little Rock were aware of what was going on and someone could contact them if they wanted to.

Q Now, when you said you were acting on instructions of the U.S. Attorney in Little Rock, did you specify the instructions of the U.S. Attorney in

69

Little Rock?
A I feel certain I would have characterized the instructions as being that he did not want us to take any action until he had completed this review that had been discussed in the meeting of September 23.
Q Did you have any further conversation with Agent Kendrick at that time?
A Well, I believe there may have been a follow-up conversation because it was agreed that I would provide a copy of the referral to headquarters, and I believe that fax went out, the entire referral went out on the same date, October 6 of '92.
Q Now --
A He also asked for -- I believe he asked for an analysis at that time, and I told him I couldn't do one that evening and I would give it to him the next day.
Q Is the analysis what's contained in the document that you earlier referred to --
A Actually, I'm sorry. I believe I may have described that -- I could better describe that rather

70

than analysis, a summary of our review of this in an update and explanation of our dealings with the United States Attorney's office.
Q And that's the document marked as Bates number 985 through 996; correct?
A No, this is -- oh, yes, I'm sorry. There's two numbers on here. Right. 985 through 996.
Q And that's the document with the facsimile sheet we referenced earlier dated 10-7-92 and attached to that is the summary you're talking about; correct?
A That's correct.
Q So this was prepared as a result of your conversation with Kendrick on 10-6-92; correct?
A That's correct.
Q Now, you had two conversations with Kendrick on 10-6-92; correct?
A I don't know if there were -- if this all occurred in one or if we called back and forth a couple of times, but I think that -- I may have my dates mixed up, but I think that I first spoke to him around lunchtime and came back on the 6th of 1992, so

71

I really don't know if we accomplished everything he wanted to cover in one conversation or if it took more than one.

Q In between phone calls to him, did you notify your superiors, Mr. Whitehead or Mr. Pettus, about this request from Kendrick?

A I'm certain I notified -- if they were both in the office, I'm certain I notified them both very quickly.

Q And what did Mr. Pettus and/or Mr. Whitehead say about this request from Mr. Kendrick?

A Told me to cooperate fully.

Q Was there any discussion at that point as to why either of them had not forwarded a copy of the referral to headquarters prior to this time?

A I never discussed with Mr. Pettus why he did not forward a referral, and I don't believe I discussed with Mr. Whitehead then anything about the referral, why it hadn't been done. It was just obviously we had a referral that they weren't aware of and they had become aware of it by some means and

72

questioned us, so we were going to give it to them.

Q Is there anything else that Mr. Kendrick said to you with respect to this referral or you said to him in any of those conversations that day on the 6th?

A I don't remember anything.

Q Did you have --

A I'm sure the conversation was longer than you know, you have this referral, you're sitting on it, send me a fax. It seems reasonable to me that there could have been some discussion, but I just don't remember what it was.

Q Do you think there might have been some discussion about the details in the referral -- details of the referral, I'm sorry.

A There very well could have been, and it would have been -- it's very likely that on the 6th, that I verbally advised him to the extent I was aware of it, of information contained in the teletype of the 7th.

For instance, I would have advised him on October 6, I believe, of the information on 995,

73

which was the U.S. Attorney Office subpoena, going on to 996, where we talked about the exhibits and the fact that we had taken no investigative action pending a prosecutive decision.

I feel certain that I would have told Kevin Kendrick on October 6 of that information and probably generally described the referral to him but probably not in the detail that's contained in this teletype.

So this teletype I believe, to the extent it describes the referral, is probably more specific than my telephone conversation or conversations with him, and I believe that the last two pages of this teletype that describe our dealings with the United States Attorney's office, I believe I provided him substantially, or all of that information verbally.

Q Did he express an opinion at that point as to whether or not your understanding -- whether or not your agency should continue on the course that you had agreed to with the U.S. Attorney's office, and that was wait for the results of their analysis?

A You know, I really don't know, because I

74

didn't care what his opinion was. My SAC had had a meeting with the United States Attorney, and it was my understanding that my SAC wanted me to follow a particular course of action, and until my SAC told me otherwise, I was not going to change what I was doing.

Q Now, what is the next significant event that occurred with respect to this matter?

A The next significant event that I recall at this moment is that on or about October 9 of 1992, Kevin Kendrick telephoned me to advise me that we would be receiving a teletype ordering us to conduct an investigation, and I believe that teletype may have been arrived on October 9 of 1992.

Q Showing you what's marked for identification as Bates number 523 through 525, a teletype dated October 9, 1992 from director/FBI to Little Rock FBI. Do you want to take a look at that? Is this the teletype you're referring to?

A Yes, it is. I had not -- now, the last page of this teletype, I did not see. We don't -- what I received was 523 and 524, first two pages.

75

This page 3 is something that I don't -- we don't --
Q 525, administrative note tickler count?
A Right. Our teletype in Little Rock didn't have this on there.
Q But in any event, the first two pages, talking about 523 and 524, are the --
A Yes, they are the teletype that I referred to before you showed me the document.
Q Now, that document ordered you to --
MR. PIERSON: Could I ask you to give him a chance to read the document?
MR. GICALE: Oh, I'm sorry.
(Witness reviewed the document.)
THE WITNESS: Okay, I've reviewed this document.
BY MR. GICALE:
Q Now again, that's the document that you were referring to, the teletype you received at about the same time that Kendrick called you on the 9th; correct?
A Yes, sir.
Q And it indicated that Little Rock should

76

initiate a limited investigation aimed at determining extent of violations as alleged in the Resolution Trust Corporation criminal referral form dated 9-1-92; correct?
A Correct.
Q Further directed Little Rock, and that's your -- Little Rock FBI's office; correct?
A That is correct.
Q -- to obtain it from the U.S. Attorney's office, United States Attorney, and review the documents referenced in the criminal referral; correct?
A That's correct.
Q And it further indicated that your office should not conduct any overt investigation such as witness interviews or serving of grand jury subpoenas at that time; correct?
A That's correct.
Q And also directed that the documents should be afforded appropriate security?
A That's correct.
Q Now, did that document indicate to you that

77

the results of this limited investigation and anticipated investigative prosecutive plan should be submitted by the close of business on 10-16-92?

A Yes, it clearly indicates that.

Q Now, did you -- did Kendrick call you first or did he call Mr. Pettus?

A I believe Kendrick called me first.

Q And did you notify Mr. Pettus right away that this teletype was coming in or was in?

A Yes. If he was in the office I notified him right away. I notified him -- my ASAC or SAC or both, as soon as I heard this. Actually, now that I think about this, I know that I had a discussion -- I recall that I had a discussion with Mr. Pettus about this on October 9 of '92 because there was a subsequent phone call which I have earlier mentioned in this deposition that occurred on October 9 of '92 which related to this teletype.

Q When you notified SAC Pettus that you had received this teletype and you --

A I'm sorry. I don't mean to be picky, but let me just make a correction here. This teletype

78

notes Kevin Kendrick called me on 10-8-92, so I would have notified Mr. Pettus or made an attempt to notify my superiors on 10-8-92.

Q So Kendrick told you on the 8th that you were going to be receiving this teletype on the 9th?

A That's correct.

Q And so you told Pettus on the 8th that you would be receiving this teletype the next day, the 9th?

A That's right, that's right.

Q What did you say to Pettus about it and what did SAC Pettus say to you about it?

A I repeated basically what this teletype says, and he -- I don't recall exactly what he said, but I'm sure that he said well, let me see the teletype when we get it. We had a discussion about what form we would use in conducting the investigation or we were waiting to see how they described the investigation they wanted conducted.

Q I'm sorry, what form?

A Yes.

Q What do you mean by "form"?

79

A The United States Attorney's office had not authorized prosecution in this case. We had not opened an investigation. And we wanted to wait and see what the teletype said exactly, or he did, and then evaluate whether or not we could accomplish what headquarters was asking for without opening officially an FBI case file.

Q Now, the next day you received the teletype; correct?

A Correct, on the 9th.

Q The 9th. And I assume at that point in time, pursuant to Pettus's statements of the prior day, you both reviewed the October 9, 1992 teletype and the instructions from headquarters; correct?

A Correct.

Q And what did Mr. Pettus say to you then about the form of the investigation that would take place?

A We reviewed what I believe had been our previous discussions that an FBI case file would not be opened at that point and discussed --

Q Can you hold on for a minute there? When

80

you say a "case file would not be opened at that point," was that pursuant to the instruction of Mr. Pettus or was that an instruction of Mr. Banks that a case file would not be opened?

A Mr. Pettus.

Q Okay. Go on, go ahead.

A I'm sorry. What were we talking about?

(The reporter read the record as requested.)

THE WITNESS: We discussed our belief that it was still preferable for us not to officially open an FBI case file.

BY MR. GICALE:

Q And why was that?

A I had mentioned before the security with which we were treating this. The serials were maintained in my safe. They were being logged into a control file, which is a file for information received, this particular file, which is not an active and assigned open case file, but it is received, logged in as part of FBI files. And I explained that to you so you understand this is not in a desk drawer someplace, it's in the FBI system,

it has a serial number on it but it has not put -- is not a new -- a new FBI case file has not been opened that would reflect that an active, overt investigation is occurring in this matter.

Q And again, the significance of that is --

A The significance is that to do that, there is -- normally there's an indices record created which if you put names, you put names and title of a case file and have references to that, and that would then be in our internal records system. A person could, as a result of some other investigation or some question, access those records and then would determine that an open case file existed on this institution and on whatever individuals were named as subjects.

Q Normally when you have sensitive files like -- well, if you have a sensitive file involving a sensitive investigation of a political figure or any significant case, what would be the normal manner of keeping that information confidential, short of keeping the file the way you did in this case?

A Well, short of keeping it in a safe and not

opening a case, you could open a case -- I could have somebody else put it somewhere, the file, the actual hard copy file, other than my safe where nobody would see it.

Q Could you not list, for instance, names and give it some kind of a code name or something of that sort?

A I've never -- with the exception of confidential sources, I've never seen that done. It may be done in the FBI, but I've never seen it done.

MR. GICALE: Off the record.

(Recess.)

BY MR. GICALE:

Q Just before the break you were talking about the discussion you were having with Mr. Pettus as to how you could comply with the request from headquarters to initiate this investigation and how you could do that in light of the instructions from the U.S. Attorney in terms of what he was prepared to do on the case; correct?

A That's correct.

Q And you were I gather trying to reconcile

83

the two positions?
A It is my understanding from the telephone conversation with Kevin Kendrick that we would be ordered to open an investigation, which certainly could be interpreted as opening an official case file. There had been a determination made, that Mr. Pettus approved prior to then, that we would not open an official FBI case file, and I was reviewing for him some of the reasons that we felt that should not be done and awaiting the teletype to see what the exact instructions were.
Q And the reasons why you thought it should not be done or -- were the disclosure of information to additional people. Is that basically the reason why you did not want to open a case file?
A That would summarize what our reasons were. There was additional discussion over concerns about -- there was a reason why we didn't want a case open. There were other reasons discussed. Let me give you two of them.
Q Give me the reasons why you didn't want to open A case file.

84

A The reasons were security. The other two that come to mind are this. If you open an FBI case file, and I was not familiar with FBI press policy or how you respond to inquiries from the news media, but I believe that -- I know that during this time, that the referral is received and an official file was not opened, that ASAC Whitehead explained to me that the FBI will not lie to the news media if they ask a question. They officially will maybe try to not answer the question but that you're not allowed to lie.
MR. BEN-VENISTE: The record will reflect nothing happened here.
(Laughter.)
THE WITNESS: If a case had been opened and for some reason the media became aware that there was a potential that a referral had been made or a case had been opened and had contacted the Little Rock FBI office and asked if we had a case opened and are working a case involving Bill and Hilary Clinton, as he explained to me, the FBI policy would require no comment. If we had opened a case, we couldn't say

85

no, because that wouldn't be entirely true. If we had not opened a case, we could say no.

BY MR. GICALE:

Q All right. That was the second reason. You said there was a third.

A The third reason is heightened concern over the RTC's sensitivity to our position in this case and the need for discretion.

Q What do you mean by that?

A That we also wanted to be in a position to tell the RTC that we had not opened the case.

Q Now, any other reasons you discussed at that point?

A Well, there were -- there was discussion that occurred as to the RTC's lack of sensitivity.

Q What was the discussion with respect to that?

A I reviewed with Mr. Pettus that the RTC, from my conversations with Jean Lewis, redirected her from the investigation of other savings and loans to Madison Guaranty Savings & Loan in mid-March of 1992 as a result of a newspaper article written by a

86

journalist named Jeff Gerth that had spoke about Bill and Hilary Clinton, James and Susan McDougal and Whitewater.

I had further advised him in that meeting that I had spoken to Jean Lewis's supervisor, Clark Walton, when I was trying to find out if it looked like a referral might be coming, or actually it might have been a different conversation, but there was an occasion in late March or early April of '92 when Clark Walton called me and asked me some names and if I knew who they were, and they were prominent names.

Q What were the names?

A Jim Guy Tucker, possibly Seth Ward. My memory is not certain on that, but possibly Seth Ward, and I can't recall if there were other names mentioned. And I asked him -- I told him when he asked me who those people were, I told him to the best of my knowledge who they were or who they might be affiliated with.

Q Now, "him" you're referring to as Walton?

A Clark Walton. He was Jean Lewis's supervisor. And I later spoke to Walton prior to

87

8-26 of '92.
Q Back up for a second. You told him who they were affiliated with; is that what you said?
A Well, I have some recollection that he asked me -- he may have asked me who Seth Ward was, and if he did and if I knew at the time, I would have told him that it was Web Hubbell's father-in-law. And I told him that Jim Guy Tucker was the lieutenant governor of the state. I'm not sure about Seth Ward.
Q Now, you discussed this conversation with Pettus, the conversation that you had with Walton with Pettus?
A I recounted, yes, the substance of these conversations, a series of conversations that occurred from March up until that date, with Walton and Lewis.
Q Any other conversation that you recounted?
MR. BEN-VENISTE: We're now summarizing here?
THE WITNESS: I think you're asking me to continue.
MR. BEN-VENISTE: You don't want to hear

88

the conversations about Lewis, I take it?
MR. GICALE: No, no. I said any other conversation.
MR. BEN-VENISTE: He hadn't finished this one.
THE WITNESS: As I understand, you want me to finish talking about what I told Mr. Pettus about contacts with RTC.
BY MR. GICALE:
Q That's right.
A Also between the time of that conversation where Walton and I discussed who certain people were and prior to my conversation with Jean Lewis on August 26 when I asked her when the referral was coming, I telephoned him and asked him if it looked like a referral on Madison would be generated, and he said yes.
And I tried to determine whether or not it would include prominent individuals based on indications from his previous phone call with me and from the fact that I think by that point, I may have been aware -- or may not have been aware, I'm not

89

sure, that Jean Lewis had run across some things on Whitewater Development that might have involved the Clintons. And he indicated to me that the referral might contain names of prominent persons.

The next conversation was with Jean Lewis on August 26 of '92, and I asked her about the referral, and she said that she had -- I asked her when we would receive the referral to allow me to respond in the Airtel to headquarters, also dated August 26 of '92, and she told me that she had an internal deadline of August 31 to get that referral out.

And she told me, obviously, the other things which have been in the two exhibits you've shown me before, that there were shell corporations involved, that there was potential criminal activity involving Whitewater during a particular time period, who the owners of Whitewater were, and she told me that she had passed up on an opportunity to take a job in another city in order to complete work on that referral and felt that she might change the course of history with that referral.

90

Q Were there any other conversations that you related to Mr. Pettus at that point in October?

A I related to him that since the receipt of the referral, that Jean Lewis had contacted me on several occasions trying to ascertain the status of the referral within the FBI and the U.S. Attorney's office and that in one of those conversations, she was apologetic, I believe, and told me that her superiors were prompting her to ask those questions.

Q Do you know which superiors she was referring to?

A The one name that I recall is Ken Iorio.

Q Is that the extent of the conversations that you related to Mr. Pettus?

A I think that was the extent of my conversations with RTC, and those are the conversations I had and I believe I related all of those conversations to Mr. Pettus.

Q Now, what was the purpose of relating them to him?

A In making the determination that an official case file would not be opened which would

91

allow us flexibility in our posture to respond to the media, one of the considerations that -- not that we necessarily would have taken that action anyway. One of the considerations was the likelihood that an inquiry would be received and our assessment of the degree and extent of knowledge outside the FBI that this referral existed and the level of interest outside the FBI. And I related this to Mr. Pettus to demonstrate to him what I believed to be a higher level of interest in this referral by RTC than in previous referrals.

Q And you believe that that was a factor to be considered in terms of whether or not to open up a file, a case file?

A Yes, because apparently since Jean Lewis had been redirected to this, considering that there was an internal deadline placed upon her by her superiors, I gauged the extent of knowledge within RTC that this referral existed to be fairly widespread, and from her conversations with me, I also gauged the level of interest of RTC to be fairly high and in assessing a potential for disclosure and

92

the likelihood that the FBI would be asked to respond as to whether or not an investigation was open, we deemed that to be a possibility.

Q After relating to -- outlining these three concerns, did you come to some determination or make some recommendation to him -- come to some agreement with him as to the position you would take in terms of opening up a case file?

A His position remained that we would not open a file, and he --

Q Was that your recommendation as well?

A That was my recommendation.

Q Now, was that in any way a reflection of the validity of the referral or was it just related to the --

A It had no bearing -- I don't believe it was based on --

MR. BEN-VENISTE: I would object to the use of the term "validity" in this context, because I don't know really what that means.

THE WITNESS: The decision was based on the concern over disclosure of the existence of the

referral and the desire to maintain a posture at Little Rock FBI that would allow us to deny a press inquiry that asked whether Bill Clinton was under investigation, and thereby protect reputations and to not have any influence on the upcoming presidential election.

BY MR. GICALE:

Q To rephrase the question I asked earlier, it had nothing to do with whether or not there were allegations that could substantiate some federal offenses?

A Well, the only way that -- as I understand your question, I think the only way I can answer that is to go back to my earlier description of types of suspected criminal allegations. This was -- the allegations did not allege a current, ongoing activity that would occur prior to the election that required immediate action. It alleged activity that occurred, I guess, about seven years before, six to seven years before, so there was no reason to have an investigation open. We did not want to diminish in any way our ability to investigate the allegations in

the referral after the election.

In other words, delaying action until after the election we did not feel would decrease any chance of success in proving any criminal violations that existed.

Q So you had made no conclusions as to the substance of the allegations at this point; your primary concern was security with respect to the names of people involved; correct?

A Well, "substance" is a broad word. I believe the Little Rock FBI had concluded that certain conclusions reached in the referral, particularly relative to Bill and Hilary Clinton, while possibly true were not necessarily supported based on solely the facts contained within the referral.

Q What about with respect to the McDougals and Lisa Anspaugh?

A Our opinion as to the McDougals and Lisa Anspaugh, based on the information contained solely in the referral, I believe that met FBI criteria for investigation.

Q But you determined that that would take a considerable amount of time?

A That's correct, and the delay would not impede us in any way in the future and that's not to say that areas other than that couldn't also be examined in a future investigation.

Q As a result of your recommendation and Mr. Pettus's decision, was this decision conveyed to FBI headquarters in Washington?

A Yes, on October, I believe, 9th, and I'm not sure if it was prior to receiving the teletype or after, I believe it was -- it may have been right after. I had discussed -- I believe it was the 9th because I discussed all of the things that I have just mentioned previously with Mr. Pettus, and I stayed in his office while he spoke on the telephone with, my memory, is Larry Potts at FBI headquarters.

Q What do you recall him telling Larry Potts in your presence?

A He reviewed the information that I just provided you about contacts with RTC, our Little Rock's office -- or his concern over the posture as

far as response to inquiries from the media and the fact that the conclusion that I told you or the preliminary opinion that certain conclusions related to Whitewater based solely on the information contained in the referral couldn't -- I mean you couldn't really say yes or no on those, and also the fact that waiting to do something on this until after the election was not going to hurt the chance for a criminal prosecution.

I think it's very possible also -- and I apologize, I have left this out as a factor of discussion when you've previously asked me about meetings with the United States Attorney's office. The fact that McDougal had previously been indicted and had been acquitted at trial was part of these discussions that occurred during the time we received this referral.

And let me digress a little bit. The Congress has authorized, as I understand, funding to the FBI specifically to investigate financial institution fraud under a statute called FIRREA, and Congress periodically requests that the FBI provide

97

updates on its utilization of the resources that it has approved and funded. As a result of that, the FBI periodically surveys its field divisions to determine the number of institutions, the number of agents being utilized to work financial institution fraud, and that's evidenced by this Airtel that we looked at and our response on August 26 of '92.

In addition to that, during this time period, it's my recollection that the Department of Justice had received some negative criticism from Congress because its efforts in prosecuting financial institution fraud cases, while successful in the number of convictions obtained, were disappointing to Congress in the amount of fines and recoveries; in other words, we were putting people in jail but we weren't getting any money back for the taxpayers.

And I was aware from talking to representatives of the U.S. Attorney's office that the Department of Justice had indicated a desire for the prosecutors to consider the likelihood of monetary recoveries when they prioritized their investigations.

98

Chuck Banks noted during the meeting on 9-23, I believe or some other time around then, and I believe I noted in some document that Jim McDougal had court-appointed counsel during his first trial, was supposed to be living in a trailer house and had been prosecuted before, so you have the factors of double jeopardy, you had the factor that there were probably no assets to pursue, and his health also I think was in question. By that I mean that it wasn't the greatest, and if you conducted an investigation that lasted a year or two, that his health could be worse.

So I think these are all things that were discussed, maybe not to that degree of detail, between Mr. Pettus and Mr. Potts as to why there were no reasons for us to rush into something that could possibly have a bad effect with public disclosures.

Q At the same time, you were aware that the department did prioritize insider abuses and financial institution fraud; correct?

A You mean that was a priority or they prioritized certain institutions?

Q No, that was a priority, officers and directors.
A Yes, yes, that was object -- obviously you want to get the top people that are involved.
Q And clearly that was part of the allegations in this referral; correct?
A No doubt. No doubt.
Q And clearly if these allegations involved someone of importance, whether it be the Clintons or the governor or the mayor, that would be a factor to be considered as well; correct?
A Correct. I'm not saying that the unlikelihood of monetary recovery is a disqualification of conducting an investigation, because it's not and I don't believe it should be. I'm saying that that was a factor considered among other factors.
Q Now, anything else with respect to that, to that factor?
A To the factor of --
Q Monetary recovery. You digressed and said this was a concern that had been ongoing in your

discussions with the U.S. Attorney's office and one I gather was discussed with Mr. Potts?
A I believe so. Basically what I'm saying is that if the U.S. Attorney has noted that as one of the things he has to consider along with his evaluation of this referral, then that's something we should pass on to fully advise our headquarters, is that that is part of the decisionmaking process of the United States Attorney.
Q Were you present when Mr. Pettus passed that along to Mr. Potts?
A Yes, even though, as I stated before, I've tried to go into detail of what I told Mr. Pettus, I have a better recollection of what I told him than what I heard him tell Mr. Potts, but he told him basically, I believe, all of the things that I said, maybe not to such detail.
Q Do you recall any other -- anything else that he said to Mr. Potts on the phone call?
A He explained the reason we didn't want to open an official case file was because we were concerned about disclosures that this referral

101

existed.
Q Is there anything else about that conversation you remember, at least the one side that you overheard?
A It's my recollection that Mr. Potts agreed and understood that while we were going to take appropriate action and do the appropriate reviews, he understood that we would not open an official FBI case file.
Q And that was the extent of that conversation with Potts at that point in time?
A I believe it was.
Q Now, so as a result of that conversation, you agreed not to open up a case file but at least to go review the documents, the exhibits; correct?
A Yes, that also may have been discussed -- you know, I didn't hear that part, but I know that there was no dispute over the need for us to review these documents and the exhibits and do what we could without being overt.
Q But that was slightly different from the way you left it with the U.S. Attorney's office on

102

September 23; correct?
A That was slightly different?
Q The way you left it on September 23 was that the U.S. Attorney's office would do an in-depth analysis, they would look at the documents, get back to you?
A That's right, that's right. As a result of this, we would advise the U.S. Attorney's office that we need access to those exhibits and we would -- we were asking to conduct a review, I don't remember if it was after they were through, but irregardless of what they were doing, we wanted to review these exhibits.
Q So that would really be the only difference between the way things were left with the U.S. Attorney's office and this teletype? You had agreed when you left the U.S. Attorney's office that you would not, for instance, issue a grand jury subpoena or not interview witnesses; correct?
A Right.
Q And that basically was -- those were the instructions of headquarters FBI?

103

A It is my understanding that Larry Potts agreed with that, agreed with the course of action that Mr. Pettus had taken.
Q As a result of this conversation with Potts, what is the next thing you or your agency did with respect to this referral and the eventual review of these documents?
A Well, at some point I would have contacted the United States Attorney's office to advise them that -- of this direction we had received, this communication we had received, and to arrange for access to the exhibits. And then the week of October 9 through October 16, I'm not saying every day, but during that period, myself and Financial Analyst Hall conducted the review of the exhibits at the U.S. Attorney's office.
Q Now, let me go back a step. There was one additional difference. There was some kind of a deadline?
A That's correct. We had a deadline of October 16 to submit results of the limited investigation and anticipated investigative and

104

prosecutive plans. So we were going to do this limited investigation which included review of those exhibits, and attempt to obtain concurrence from the United States Attorney of a prosecutive plan.
Q And again, that was different from the review that you earlier indicated would take some time if you ultimately wanted to complete the investigation of the case?
A That's correct. This review was obviously more in-depth than just reading the referral, because it would allow us to refer to the exhibits that were cited in the referral, but it still would not be what I call a full-blown investigation.
Q Now, when you called the U.S. Attorney's office, do you know whether you talked to Mr. Banks or Mr. Dodson at this point?
A No, I'm not sure. I'm not sure that this was accomplished -- things may not always be accomplished in one telephone call. I may have talked to both of them. I talked to one or the other or both.
Q When you talked to them, did you relate

105

Mr. Pettus's conversation with Potts as well as your conversations with Kendrick, your first conversation in the car?

A Well, I don't know if I related those -- I don't know if I -- for certain that I related those to him. If I did, I don't know that that would have all occurred sometime between October 9 and 16. I could have related conversations that occurred prior to October 9 with FBI personnel or RTC personnel. I could have related those conversations to Chuck Banks prior to October 9. Whenever they occurred, any time after they occurred, I could have advised him if it was natural during a conversation with him and seemed to be something that would give him information he needed to make a decision.

Q Well, do you recall shortly after receiving the call from Kendrick in the car, inquiring as to whether or not you had this referral --

A I believe that I -- you know, as I think about this, I believe that I may very well have told Mr. Banks about the call from Kevin Kendrick, but I can't be certain that I did or when I did. There may

106

be something that would refresh my recollection.

Q Do you recall eventually explaining to either Banks or Dodson from that office how it was that you received the teletype of October 9, 1992?

A Did I recall explaining to him how I received it?

Q Right, what prompted the teletype.

A Yes, yeah, I think I did. I did tell him about the contacts. I don't know exactly what the conversation was, but I advised them that we had received the teletype, that we had received the directive from headquarters and what the directive was. I may have read it to him.

Q What was their response when you told them this? Did they have any disagreement with it?

A They had no problem with us reviewing exhibits.

Q Did they have any problem with the deadline?

A Well, the deadline was -- the deadline really was on the FBI in Little Rock. There was eventually -- Chuck Banks did indicate that he was

not under any deadlines, that the FBI communication to Little Rock putting a deadline on Little Rock did not apply to him.

He was trying to be cooperative with the FBI so that it could comply with the deadline from headquarters, but he was -- to the extent that we were to obtain a prosecutive plan of action, which we interpreted to be some sort of even preliminary prosecutive opinion if we could get one, he did not feel like he was under a deadline of October 16 to reach a conclusion or decision about a prosecutive action. That's what he related to me.

Q Okay. Now, so that -- while he agreed that they would cooperate, in terms of -- internally, you were asked to review documents and come up with a prosecutive plan of some sort?

A Maybe I can put this more succinctly. Chuck Banks told me that as of the 16th of October, he wasn't sure that there would be a prosecution. He had not made that determination. This research he talked about earlier, the double jeopardy and all those things, he was still considering all that. And

it may be how -- there may be a difference in how we viewed a prosecutive plan and him, but he was not committing to a prosecution.

Q And you conveyed this, the fact that you were to initiate this investigation in this form, that you were to review these documents and that you were to have some kind of response to FBI headquarters by the 16th; correct?

A Correct.

Q And he said he would cooperate with the exception of assisting you in providing some kind of prosecutive plan?

A Well, he didn't say when I advised him that, that I'll cooperate except for this, that I recall. At the end of that period, we were -- I tried to -- before I would respond to headquarters as to what Chuck Banks's position was or what a prosecutive plan was, I needed to consult the prosecutor, so I believe on or about the 16th, I would have -- there would have been some consultation I was aware of where we asked him about prosecutive plans, and I think that is when -- sometime around

109

that time is when he indicated that he didn't have to decide by October 16 what his prosecutive plan was.

Q So between October 9 and October 16, you participated in a review of these 300 documents?

A Yes.

Q And how long -- how much time was spent on that review?

A Oh, myself and the analyst spent at least an eight-hour day for two or 2-1/2 days. We reviewed every exhibit.

Q Now, were you doing that with an Assistant U.S. Attorney at the time or just independent of them?

A Independent.

Q Now, as a result of your review, and I assume after your review of these documents, you had some meeting or some discussions with the U.S. Attorney's office --

A Yes.

Q -- prior to the 16th?

As a result of your review, did you determine that the data furnished may indicate

110

criminal activity on the part of James and Susan McDougal and Lisa Anspaugh?

A Yes.

Q Did you further conclude that the available facts indicate elements of one or more federal violations that may exist?

A Yes.

Q I'm showing you what's marked for identification as Bates number 526 through 528. This is a teletype dated October 16, 1992 from FBI Little Rock to the director. If you want to take a moment to review it.

A Yes, please.

(Witness reviewed the document.)

Okay, I've reviewed that.

Q Now, did you prepare this or assist in the preparation of it?

A I assisted in the preparation at a minimum. I may have prepared it. I believe this is my language.

Q And does this reflect the results of your review during the time period between October 9 and

111

October 16, 1992?
A Yes, it does. You know, after reviewing this, I can state with certainty that I prepared this, and this accurately reflects the views of the FBI. And to the extent this cites the views of the U.S. Attorney's office, it accurately reflects our understanding of those views.
Q One of the other things reflected in this teletype is the fact that the U.S. Attorney was holding provision of a prosecutive opinion regarding those subjects in abeyance; correct?
A That's correct.
Q And as a result of that, your office determined that you would be in a noninvestigative posture regarding the matter and would not conduct a further investigation without concurrence of the U.S. Attorney and a positive prosecutive opinion; correct?
A That's correct.
Q Now, subsequent to that or maybe at about the same time, Mr. Banks wrote a letter to Mr. Pettus. I'm showing you a document marked for identification as 1000 through 1001, a letter dated

112

October 16, 1992 to Pettus, to Mr. Pettus from Mr. Banks regarding criminal referral C0004.
Now, did you receive that letter prior to sending out the teletype of October 16, 1992 or did you receive that subsequent?
A I was aware of the information in this letter prior to the 16th, and I believe that it was received on the 16th. I can't be certain, but Chuck Banks read me like a final draft of this letter.
In fact, it may be that I went -- that there had been discussion about a letter, I think there had been discussion, I think I was instructed by Mr. Pettus to obtain this letter from the U.S. Attorney's office, which would clearly state what their position was and allow us to respond to headquarters on the 16th. So I'm --
Q Then this letter was sent to Mr. Pettus at the request of Mr. Pettus?
A That's my understanding.
Q You conveyed his request to Mr. Banks, I take it?
A Well, he may have conveyed his request to

113

Mr. Banks and then told me to go pick up the letter.
Q I take it from that that there was some kind of conference or meeting, after you had responsibility for 2-1/2 days of reviewing these documents and the conclusions that we just discussed, that you just related were discussed at some meeting prior to Mr. Banks reading this letter to you; is that correct?
A I don't recall a separate meeting now. There were a lot of meetings, but I believe there would have been a meeting -- I believe there was a meeting to discuss what our review was and that the results of our review were communicated to Chuck Banks.
Q And then you collectively had to determine what each of you was going to do, I guess, at that point; correct?
A I believe that I informed Chuck Banks sometime around the conclusion of the evaluation that I conducted of those exhibits of what the findings were, and there was nothing in my findings that changed his position, that no action would be taken

114

prior to the election and that he still had not made a decision, ultimate decision, about prosecution.
Q Well, what findings are you referring to?
A Well, my findings, what I'm referring to -- the reason this was sensitive was because the Clintons' name was in it. The reason I believed and Mr. Pettus told me he believed that this was being treated as carefully as it was was because of concerns of fairness to the Clintons and the premise that you asked me before about whether something should be pursued if there's something there.
This review was to determine, as I described before, whether or not the referral on its face indicated any evidence that there was some ongoing activity that required immediate action or was alleged or suspected a possible activity that could be investigated at a later date.
And my review partially was that I saw nothing related to Whitewater that indicated a current, ongoing situation that had to be addressed, that the information in there was not sufficient to draw a whole lot of conclusions and that it was

115

obvious to me that there had been a great deal of check-kiting going on.

Q Did you also conclude that further investigation at some point in time would have to occur before an ultimate determination could be made as to whether or not some charges could be brought?

A Well, of course, of course. With any referral there has to be a full investigation conducted. In my experience, few referrals that are received are sufficient for the U.S. Attorney just to go proceed with a prosecution without an FBI investigation.

From the standpoint of the FBI, what I was telling Mr. Banks was that I believed that a criminal investigation of Madison which would encompass the information in the referrals could bear fruit as far as prosecutions, and my judgment on that was also tempered by the fact that I had examined the previous case file of the unsuccessful prosecution of McDougal, and felt that there was information in there also.

Q So you concluded that an investigation

116

could bear fruit but that it did not have to be conducted prior to November 3, 1992?

A That's correct.

Q And I take it you believed or Mr. Pettus believed that since you were not in a position to present some kind of prosecutive plan at that point -- or withdraw the question.

Were you in a position to present a prosecutive plan to headquarters at that point in time?

A Well, no, because in his letter, Mr. Banks says that he believes it would be helpful to reiterate what he had previously told the FBI, and that was that neither he nor his office would participate in any phase of an investigation concerning that referral prior to November 3, '92, and that pretty much negated any action that the FBI could take on that referral.

Q So that Mr. Pettus then indicated to Mr. Banks that if that was his position, that he would have to -- it would be helpful to indicate that in a letter so you could take that and bring it back

117

to headquarters and explain to them?
A I'm not sure what Mr. Pettus indicated to Mr. Banks. What I've testified to is that I believe it's possible that I was dispatched to pick up this letter and bring it back to Mr. Pettus, and it's -- conversations of some type probably -- I believe there was some type of conversation -- I know there was a conversation between me and Mr. Banks when I picked this up, and I believe there was a conversation between me and Mr. Pettus after I delivered this to him, because this would have been a factor in our teletype response on October 16.
Q When you picked up this letter, did you fax this letter to headquarters FBI?
A No.
Q Pardon me?
A No.
Q Why is that?
A Well, it's a letter to Mr. Pettus, and I gave it to Mr. Pettus. He did not ask me to fax it to headquarters.
Q Did you have a discussion with anyone from

118

headquarters FBI that date prior to or subsequent to the teletype that was sent?
A Did I have a discussion with them about this letter prior to?
MR. BEN-VENISTE: Why don't you just show him the teletype.
MR. GICALE: He's got the teletype.
THE WITNESS: I don't recall. This teletype references a telephone call from -- it says director, Little Rock, and then a telephone call from the SAC to headquarters on the 9th. That's the one I'm familiar with, the telephone call from the SAC to Mr. Potts on the 9th of '92.
BY MR. GICALE:
Q Are you familiar with any phone calls subsequent to the 9th, either that you had with headquarters or Mr. Pettus had?
A I'm not personally familiar with the contacts Mr. Pettus may have had. I had a follow-up contact of some type with Kevin Kendrick.
Q When was that?
A I don't know. Sometime around this time.

119

Q Showing you what's marked for identification as document 529 through 531, a document dated October 26, 1992 from the director to FBI Little Rock. Would that be the next conversation you had with -- or well, next communication you had with headquarters, or was there something in between?

(Witness reviewed the document.)

A I can't tell you that I have a specific recollection of certain specific conversations, but I can tell you that, for instance, this teletype that you showed me was authored by me, and it was general practice that prior to --

MR. BEN-VENISTE: Which one are we talking about?

BY MR. GICALE:

Q 10-26-92, isn't that from the director to FBI Little Rock?

A I'm sorry. Yeah, you're right, this is a headquarters teletype, 10-26-92. The standard practice was when teletypes would go between Kevin Kendrick and myself, is that we would have a

120

telephone conversation about the fact that -- about whatever the substance was and that a teletype was coming, and I think some of the teletypes we actually maybe transmitted via facsimile, and I would call to make sure he was there to get the teletype.

So yeah, I believe I had conversations with him looking at this, on or about the 16th in conjunction with that teletype being sent up, since I think it was supposed to be his direction, and I asked him to remind RTC to continue addressing the other referrals that we talked about before to Little Rock -- or not referrals, two failed Little Rock institutions, we wanted them to prioritize for examination and potential referral.

This teletype is his response to me, advising me of what Ken Donahue of the RTC told him, and it's very possible that Mr. Kendrick verbally advised me of this information on the phone before he sent me this teletype, but I can't be certain.

Q Well, but it does reference, in any event, a phone call with Kendrick on the 16th, either just before or just after the teletype was sent?

121

A Yes, yes. I feel very confident that I would have had a telephone conversation with Kevin Kendrick on the 16th in connection with that teletype being transmitted.

Q Once you had either verbally or by virtue of this teletype informed Kendrick and FBI headquarters of your conclusions and your investigative posture, did Mr. Kendrick or anybody from headquarters indicate that they disagreed with that?

A The posture?

Q Yes.

A Not that I'm aware of.

Q And so how was the matter left at that point as of the 16th?

A At that point on the 16th of October, it was left that we would wait until after November 3.

Q What is the next significant event that occurred with respect to this criminal referral? And I take it nothing happened between that time and November 3.

A I don't remember anything happening between

122

that time and November 3. The --

Q Between the 16th and -- do you remember any other conversations with headquarters or the U.S. Attorney's office in Little Rock between October 16 and November 3 with respect to this referral?

A I remember further conversations with the U.S. Attorney's office. I couldn't place them before November 3 with certainty. They may have occurred right after November 3.

Q Do you know whether or not the U.S. Attorney's office had conveyed their position to main Justice?

A Based on what Chuck Banks had told me on October 16, or whatever date I picked up that letter, I believe it was the 16th, it was my understanding that he had not conveyed the information in that letter to DOJ.

Now, let me back up because you've refreshed my recollection. On October 6, Mack Dodson advised me that he and Mr. Banks were considering notifying DOJ, that they had received this referral, and he made reference to some type of hot line, was

123

what he called it, that DOJ maintained for either high profile referrals or high profile cases, and he expressed to me that they were considering notifying DOJ via this hot line mechanism, but I'm not certain whether or not that occurred. At least at this moment, I can't tell you if I ever knew for certain.

Q And --

A And then -- okay. And back on to continue answering your question, on the 16th, Chuck Banks noted to me that there had been communications between Department of Justice to FBI headquarters to FBI Little Rock, to his office, but there had been no communications from the Department of Justice directly to his office, and I don't -- so I don't -- that's all I really know about what he had told DOJ at that time.

Q So he had not received any direct communications, he was noting that the communications had gone, as you just had described them, eventually to him but not directly through DOJ?

A It was noted by both of us, I don't know who -- it was discussed.

124

Q Did he express some -- was he critical of that process or did he express some criticism of that process?

A He -- well, this is my interpretation of what he thought, but I think that he was at least mildly critical of that -- no, sorry. I believe he told me he didn't understand why he had not been contacted directly.

Q What is the next significant event that you recall occurring with regard to this referral after November 3, 1992?

A At some point after November 3, 1992, I had a discussion with Mr. Banks and asked him if we were going to initiate an investigation of Madison.

Q I'm sorry, if you were going to or whether --

A Whether we were, if we were, I don't know what I said back then. I wanted to know if we could expect to receive a positive prosecutive opinion.

Q What was his response?

A He indicated that he was leaning toward referring that to Department of Justice for their

125

consideration.
Q Did he explain why?
A Yes, he did. He I think recounted the previous discussions we'd had about the facts surrounding Madison Guaranty Savings & Loan; by that, I mean potential for recoveries, potential double jeopardy, that sort of thing.
He said that he feared that if he conducted -- if he conducted an investigation or prosecution, that as basically a lame duck United States Attorney -- because he intended to gracefully leave rather than being asked to leave -- that he felt like that the office of U.S. Attorney in Little Rock would come under criticism from Jim McDougal that the investigation was politically motivated, and he recounted for me the previous prosecution of Jim McDougal where Chuck Banks said Jim McDougal had made numerous allegations that there was some political motivation to the prosecution.
Mr. Banks said that given the fact that the Democratic administration had been elected, Bill Clinton, and he was a Republican appointee, that

126

there could very likely be allegations that him pursuing this case was a sour grapes retaliation move and he felt like that would be detrimental to the U.S. Attorney's office in Little Rock and would impede its ability to function in other investigations and have the public perceive it as a fair office and a fair institution.
He also noted that since he intended to leave and a successor whose identity he was not aware of would be named and this was a very high profile matter, he was not entirely comfortable making a prosecutive decision that would obligate a person who would come in after him to a high profile investigation if they had had no input in determining whether it should be opened.
And because of that, he felt like the best course of action was to refer this to career Department of Justice employees who he indicated were in general viewed as less political than the United States Attorney appointees around the country.
He also assured me that he wasn't running from this because of who was involved, but he felt

127

like for the sake of the reputation of his office, that that would be the correct course of action.

Q How soon after the election did this conversation occur?

A I can't place it right now.

Q So as a result of that conversation, did he indicate that he was going to send some kind of letter or a request to the Department of Justice to have them take over this case or look into this case?

A I couldn't say for sure what he said about that.

Q Well, how was the file left in your respective offices at that point, the status of the investigation?

A There was still no official separate case opened, and the serials, the documents that I had, I believe I maintained in my safe.

Q By this point in time, did you also have a copy of the exhibits or did you just have --

A No, I don't believe that we had the exhibits. We did not receive copies of the exhibits, to my recollection, and I do not believe that we

128

received the original exhibits.

Q I take it that you informed Mr. Pettus of Mr. Banks's position on this?

A I don't have a specific recollection. Mr. Pettus was transferred out of Little Rock, I believe, in early December of 1992. He actually had been promoted and that was actually his departure date, so if the conversation occurred -- the election was November 3. If the conversation occurred with Chuck Banks in December, Mr. Pettus would not have been -- we may not have had an SAC, we may have just had an acting -- the ASAC may have been functioning as the SAC.

So I can't place the time he told me that. It was sometime after the election and sometime prior to when he left office.

Q In any event, whoever was there, did you convey this information and make some determination as to what you would do next with respect to your file or the nonfile?

A I think -- you know, I think I did convey that to the ASAC and the SAC.

Q What about FBI Washington?
A I don't recall doing that.
Q So it was just returned to the drawer and you moved on to other things, I take it?
A I was already on to other things.
Q What is the next significant event that occurred after that?
(Witness conferred with counsel.)
(Whereupon, at 1:11 p.m., the deposition was recessed, to be reconvened at 2:10 p.m. this same day.)

AFTERNOON SESSION (2:10 p.m.)
Whereupon,
STEVEN D. IRONS
resumed the stand and, having been previously duly sworn, was examined and testified further as follows:
EXAMINATION (Continued)
BY MR. GICALE:
Q Mr. Irons, before I ask you a few more questions -- a number of other questions with respect to events that occurred after November of 1992, from January 1992 to the present, what has been your position in the Little Rock FBI office?
A I've been the supervisor of the white-collar crime squad.

131

Q And as a special agent in Little Rock, did you concentrate in any particular crime area? Was it bank fraud?

A Yeah, I spent almost that entire period working the failure of a savings and loan in Little Rock.

Q What about the period between December '80 and June of 1990?

A The majority of the time was spent investigating white-collar crime. Some of that was spent investigating bank fraud.

132

MR. BEN-VENISTE: I'm sorry. I didn't get those dates.

THE WITNESS: From March of 1980 until December of 1980.

BY MR. GICALE:

Q Any particular squad?

A White-collar crime.

Q Now, when we left -- one other thing. Did you go there right after college?

A No, I worked for Arthur Andersen, a public

133

accounting firm, in Tulsa from my graduation in June of '79.
Q Which firm was that again?
A Arthur Andersen & Company.
Q From June '79 to November '79?
A Yes.
Q I take it you have a degree in accounting?
A Yes.
Q Now, before we left for the break, we had discussed the fact that after the election, you had discussion with Mr. Banks with respect to the investigation, he indicated that his intention was to forward it to the Department of Justice and you indicated that you filed -- your file stood -- your investigation or file stood the same way that it had prior to the election, there was no technical open file on the matter in Little Rock and they were was just, I guess, kept in some kind of a secure area in your office?
A That's correct.
Q What is the next significant event that occurred with respect to that referral?

134

A You're asking me the next event that happened in the handling of that referral?
Q Yes. Do you recall anything happening, for instance, in the balance of 1992?
A We're talking about action I took on the referral?
Q Well, action you took or you are aware that someone else took, either the RTC or Department of Justice.
A Well, the RTC had -- I had contacts from the RTC concerning the referral between the period October of '92 and into '93.
Q What were the nature of those contacts?
A Jean Lewis was attempting to determine the status of the referral.
Q What did you tell her?
MR. BEN-VENISTE: Could we fix some dates?
THE WITNESS: Around September 18, Jean Lewis had a conversation with me about when a decision would be made, and I told her that there would be a meeting with the FBI office and the United States Attorney's office, and I told her that I would

135

not be able to confirm for her when the meeting took place and that I was not going to be able to relay to her what the result of the meeting was. And I had indicated to her that because of the sensitivity of this referral and the people involved, it was being handled more discretely or with great care, an even greater degree of care.

BY MR. GICALE:

Q Subsequent to September 18, 1993, did you have any other contacts with Jean Lewis with respect to this referral?

A She spoke to me, I believe, in October of '92 and told me that she had heard --

Q I'm sorry, the date -- September 18, 1992; correct?

A Yes.

Q I think I might have stated '93.

MR. BEN-VENISTE: Don't you want to hear about '92 first?

BY MR. GICALE:

Q I do. I just wanted to correct the record --

136

A The referral came in '92; right?

Q Right.

A Yeah, I'm talking about '92.

Q So September 18, 1992 is when you had a conversation with her and you told her there was a meeting but you couldn't give her the date, and then --

A And I told her that I wasn't going to be in a position to give her status reports.

Q Was not?

A Was not.

Q Right.

A And told her it was because of the sensitivity and the fact that it was being closely held within the offices.

Q Then you started to say that you had some conversation with her in October of 1992.

A I believe in October, it could have been November, I had a telephone conversation with her. It was October or November, I believe.

Q Do you know whether it was before or after the election?

137

A I'm not sure if it was before or after the election right now. I'm not sure.
Q Do you know whether it was before or after the Banks October 16 letter?
A I believe it was after the October 16 letter. And she advised me that she had heard from her superiors that the FBI in Washington had told the RTC in Washington that the referral had no merit.
MR. BEN-VENISTE: I'm sorry, I didn't hear that.
(The reporter read the record as requested.)
BY MR. GICALE:
Q Now, did she indicate to you who from the FBI had told who in the RTC -- who from the FBI in Washington had told whom in the RTC in Washington that the referral had no merit?
A No.
Q What was your response to that?
A I explained to her that from my reading of the referral, that in relation to Whitewater, which I believed was the most significant part of that referral for everybody concerned, that my review had

138

not resulted in my complete endorsement of some conclusions reached regarding the extent of certain parties' knowledge.
And I believe I may have related to her some of the reasoning that the -- some of the factors that the U.S. Attorney's office would have to consider, such as the previous prosecution, and I believe I -- I can't be certain, but I have some recollection that this might have been between the 16th and the election. And I indicated to her that she should -- I felt like that it would be obvious to her why we would not take action prior to November 3. I can't be certain that this call didn't happen after the election. I'm just not sure right now.
Q You stated to her it would be obvious or you felt --
A I told her that I thought it was unrealistic for her to expect us to take, you know, any kind of action that would be ill-advised based on the nearness of the election.
Q What was her response?
A My recollection is she said she understood

139

that.
Q Was that the extent of your conversation?
A I believe that in that same conversation I told her that in order to make determinations that certain additional information could be provided with referrals, for instance, when a referral cites a loan as a key element of a suspected criminal -- event of criminal conduct, that in evaluating the prosecutive potential of that set of circumstances, that it would be helpful if we received information relating to the loan file, loan payment history, the more detailed -- in other words, the more details the better.
And I believe she indicated she would try to provide more details on future referrals, and I'm not certain if she indicated an intention to provide more details on this referral, but it was just a general conversation with her where I was telling her the kinds of things that could be included in referrals that would be helpful to us in our decisionmaking process.
Q And at that time, did you think that that kind of information would be of assistance to you

140

with respect to that particular referral?
A I believe so. For instance, if a loan is mentioned in a referral and then there is a suggestion that criminal conduct is involved in the circumstances surrounding that loan, I'm aware from my previous experience that if you know for a fact that the loan has been written off as a loss and you know the amount of the loss and you know that the bank has attributed the loss to the actions of a particular party, that that information at the front end is sometimes -- is often helpful to the prosecutor.
And by that, I mean if a loan was written off, if the loss was large and met their general prosecutive guidelines and there had been some determination by some other body as to suspected responsibility for the loss, in my experience that has made prosecution more attractive to federal prosecutors.
Q Earlier, I indicated to you that -- I referenced the fact that one of the allegations in the referral, C0004, was an allegation that loan

141

proceeds had been diverted. Do you recall that?
A Yes.
Q Would it have been of assistance to you to have more records with respect to that transaction to determine whether or not there was any viability to prosecute that federally?
A If that was an area that would have been investigated or authorized for prosecution by the United States Attorney's office, that would be something that we would want to round that out. That would be part of the investigative process I described that might take up to a year where you obtain those records, trace outpayments, that sort of thing.
Q Was anything further said with respect to the status of the referral or any information that you thought you would need with respect to the referral or other referrals at that point?
A I don't remember anything else.
Q When is the next time you had a conversation with Jean Lewis or someone from the RTC with respect to this referral?

142

A Well, I can't be certain of the next conversation with Jean Lewis. She contacted me in the spring of '93 to tell me that the RTC had received a Freedom of Information Act request concerning something in the referral, either a company name or a person's name or maybe both, that she had received an FOI request from I believe an Arkansas newspaper regarding some bit of information that was identical or similar to what was in the referral.
Q Why was she calling you about that?
A She was checking up with me, as I recall, to see if responding to that FOI request would hinder an FBI investigation.
Q And what was your response to her?
A I told her that I believe that -- in that conversation, I believe she said that she may have called the United States Attorney's office and they suggested that she be governed -- since she was an RTC employee, that she be governed by RTC's guidelines on dealing with FOI requests. And I suggested to her that that would be my advice also.

143

Q I'm going to show you what's marked for identification as Bates number 1536. It's a memorandum from you to SAC Little Rock dated January 6, 1993. Is this the conversation that you're referring to in the spring of 1993?
A Yes, it is.
Q Does this refresh your recollection as to what occurred in that conversation?
A Yes.
Q And your memorandum to your supervisor with respect to that conversation; correct?
A Yes.
Q Now, the supervisor at that point was Mr. Satkowski, in January?
A If he had arrived, it was Mr. Satkowski. He had been named as the special agent in charge. I'm not sure what date he arrived.
Q Now, up to -- from the time of the election to this point, you just described the contacts you had with Jean Lewis. Did you have any other contacts with headquarters FBI or main Justice with respect to this case?

144

A I can't recall any contacts with main Justice during 1992, or -- the first contact I had with main Justice that I recall is when I met Don Mackay in November of '93.
Q And are you aware of any contacts that the U.S. Attorney's office in Little Rock may have had with the Department of Justice during this time period, from after the election to January of 1993?
A Other than as I said before, Chuck Banks had indicated that he was leaning toward sending this thing to DOJ. I don't know when he did that or exactly what he did. I can't remember that now, but if he did that, then that could have occurred between January and the time he left, which I think was March, in March of '93.
Q Do you know whether or not he ultimately sent a letter to the Department of Justice requesting that he and his office be recused from the matter and that it be handled -- a decision be handled by the Department of Justice?
A I feel like I know that. I'm not sure that I knew that from him. I may have heard that from

145

Jean Lewis.
Q Do you recall whether or not you received a copy of the letter to the Department of Justice that he sent?
A I don't recall receiving a letter, copy of any letter.
Q Did he -- you say you knew that from Jean Lewis?
A I feel like I knew that at some point. I don't know when I first knew that. I'm not sure how I learned it. It might have been from Jean Lewis, because she was trying to keep track of this referral.
Q When did you ultimately -- do you know approximately when you ultimately learned that it was sent to main Justice by Mr. Banks's office?
A No.
Q After January of 1993, when is the next time that you recall either talking to Mr. Banks's office or Jean Lewis or somebody from RTC or somebody from headquarters FBI involving this matter?
A Whenever the conversation occurred with

146

Chuck Banks where he indicated that he was considering sending this to DOJ, whenever it was that that occurred. I don't remember any more conversations with him after that up until the time he left or after he left. I may have discussed it with him a year or two after he left in passing, but I don't remember any conversations after that.
When he indicated to me that he was leaning towards sending it to DOJ, that's the last time I can recall talking to him about that. He may have confirmed to me that he did that, but I don't remember that he did that.
Q Okay. What about Mr. Dodson or someone else from the office; for instance, Mr. Jackson?
A I'm not sure.
Q Now, the review process that occurred in '92, with respect to the U.S. Attorney's office in Arkansas, did that include any other assistants other than Mr. Dodson and Mr. Banks, the U.S. Attorney, Mr. Banks?
A At the time I don't recall being aware that it involved anyone besides Chuck Banks and Mack

147

Dodson. I subsequently learned in 1993 that Fletcher Jackson was involved in the review, and that's from Fletcher Jackson telling me that he was involved in the review.

Q So from the time that Mr. Banks left -- and he left the end of February, I believe, end of February 1993 -- what is the next action that you recall occurring with respect to this referral? And when I refer to "action," whether it be a contact with Jean Lewis or the RTC or FBI headquarters or DOJ.

A As I answered before, Jean Lewis may have been the one that told me that the referral had been sent to the Department of Justice. If she wasn't the one that first told me, she could have subsequently had a conversation with me about the same topic.

Q So at that point you're still in a noninvestigative mode awaiting a prosecutive opinion from the U.S. Attorney's office?

A The FBI is. At some point, Jean Lewis indicated that there would be additional referrals on Madison, but the last action -- the last subject of

148

action the FBI took was during the week of October 9 or 16 when we read the exhibits.

Q When is the next action that you recall being taken with respect to this matter, this referral?

A Jean Lewis -- well, actually her contacts were, I think, related to the upcoming referrals.

Q Just to fast forward us a moment, would that have been in July of '93, July or August of 1993, or was it sooner than that?

A It was July 21, 1993. There was a conversation on July 21, 1993 with Jean Lewis where she told me that additional referrals would be sent on Madison.

Q Now, from January -- the end of February to July 21, 1993, were there any contacts between your office and the RTC or U.S. Attorney's office?

A There were no contacts that I recall between my office and the United States Attorney's office. There were no contacts that I recall between our office and Little Rock and our headquarters, but because I deal with RTC routinely in my job on

referrals that have already been sent and may be sent, I can't -- I feel like there were contacts between the FBI and RTC, but I just can't say for certain that this referral was discussed.

Q Now, at the time you were advised of the new referrals by Jean Lewis in July of 1993, did you urge Jean Lewis to provide you information or the FBI with information, further -- did you urge her to provide the FBI with further information with respect to those referrals?

A The conversation -- yes.

Q Now, why was that at that point in time? Why did you request that additional information at that point in time?

A I had developed an interest in Madison Guaranty Savings & Loan independent of information contained in the referral she had sent in 1992, and on July 21, investigative action was taken that resulted in me deciding that we were at a point in that investigation --

Q In which investigation?

A In the investigation I was referring to,

the investigation I just referred to, and I felt like we had reached a point in that investigation where it would not compromise the particular investigative techniques that we anticipated to contact RTC and ask about the existence of certain files.

Q All right. So another investigation -- off the record.

(Discussion off the record.)

BY MR. GICALE:

Q In July of 1993, you were investigating -- there was some other investigation ongoing. What was the nature of that investigation?

A That was a government fraud investigation involving the Small Business Administration and specifically included a company named Capital Management Services and its owner, David Hale.

Q Now, as a result of that investigation, you determined that you needed -- was it at that point in time that you decided to open up a file with respect to Madison Guaranty?

A The file on Madison Guaranty wasn't opened at that time.

151

Q As a result of that investigation, you --
MR. BEN-VENISTE: As a result of what investigation?
BY MR. GICALE:
Q The Hale investigation that he just referenced.
MR. BEN-VENISTE: Well, there is no result. That's the problem here. We're not getting into the result, pursuant to our agreement. Maybe you could rephrase it.
BY MR. GICALE:
Q I'll rephrase it. No. Because of the Hale investigation, you obtained some leads or an interest in pursuing some other individuals or organizations?
MR. BEN-VENISTE: As I understand the testimony, as a result of another investigation he was conducting, he made inquiry of the RTC as to the existence of certain files within their possession. Is that --
THE WITNESS: That's two different things.
MR. BEN-VENISTE: I understand that, but is that really your question, Lou?

152

MR. GICALE: Yes.
MR. BEN-VENISTE: Can you answer that question?
MR. GICALE: That's my question.
(The reporter read the record as requested.)
THE WITNESS: Yes.
BY MR. GICALE:
Q Did you then tell Jean Lewis that the FBI and prosecutor would be reviewing certain records in the near future concerning that investigation?
A I may have. I would like to make it clear. I don't believe that I identified or described the investigation to Jean Lewis on July 21.
Q After July 21, did you have another conversation with her with respect to her referrals, the referrals that she said that she would be submitting and/or the first referral that had been submitted?
A In that conversation of the 21st of July of 1993, when I listed records that we were interested in and in so doing used the names of either companies or individuals, I believe Jean Lewis made an

observation to me that from my question, she assumed that we were investigating her referral, and I believe in that -- I believe it happened in that conversation, and I suggested to her that she not draw that conclusion.

And I believe that she said -- she may have said that we began investigating it as a result of a newspaper article. If I could put that in perspective, she called me earlier to advise me of an FOI request from this Arkansas newspaper. I believe after that an article appeared in an Arkansas newspaper concerning one or more of the names that I questioned her about that day.

So when I questioned her about those names on July 21, she observed to me that she was drawing a conclusion or basically she phrased it in a way of a question, that as a result of information in that article, we had began taking another look at her referral, and that's when I cautioned her against drawing any conclusions.

Q When is the next time you had a conversation with her or the RTC with respect to that

referral, the '92 referral or the upcoming referrals?

A The next conversation I had would not have related to 0004, the first referral. It related to my trying to determine, and I'm not sure who initiated the contact, but my trying to determine when we would receive those referrals, the new referrals.

Q When would that have been?

A Well, it would -- if it wasn't on the 21st of July, it would have been between July 21 and the day we received the referrals.

MR. GICALE: Off the record.

(Discussion off the record.)

BY MR. GICALE:

Q What is the next contact you had with Jean Lewis or the RTC after the 21st of July, 1993? I believe you said something about seeking some information about when the new referrals were going to be coming in.

A Yeah, I have some recollection that I had a conversation with her regarding the anticipated date that the referrals would be provided to us, new

155

referrals, and that was -- well, I believe that was -- I would place it between -- to the best of my ability, I would place that between July 21 and August 20 of '93.

Q Now, why were you concerned about obtaining that information from Jean Lewis or the RTC? Withdraw that.

Did you view the information you would obtain from the RTC as information that would be of assistance to you in your investigation?

A Not necessarily.

Q Why did you request the information from Jean Lewis?

A My interest was in obtaining full access to the records of RTC, in RTC's possession of Madison Guaranty Savings & Loan.

Q Now, how did the obtaining of the referrals give you access to all the RTC records that you needed?

A I expected that once we received the RTC referrals, that -- I anticipated that an investigation of Madison would be opened or if it had

156

not already been opened, the receipt of the referrals would be a natural precursor to us asking for access to the records of Madison Guaranty Savings & Loan.

Q So you viewed the receipt of the referrals, then --

A That was -- I'm sorry. Finish your question.

Q I'll withdraw it. If you received the referrals, then it would not tip anybody off to an independent investigation of Madison Guaranty?

A That's correct.

Q Anybody, including the RTC?

A Anybody. I should note at this point that the investigation of Hale, up until July 20, was very closely held within the FBI office in Little Rock so it's not just the RTC -- it's just a general desire for confidentiality.

Q And your feeling was that if you asked for these records before you got the referrals, that would tip some people off to this investigation sooner than you would like?

A Well, I asked about some records on July

157

21, and I had interest in additional records that I did not want to specifically identify to anyone outside of the FBI.

Q After the conversation in August of '93 requesting information or -- when the new referrals would come in, when was the next conversation you had with the RTC with respect to this investigation?

A Well, I didn't have a conversation with RTC in respect to the first referral, and I didn't have really a contact -- I guess there was mention of the upcoming referrals, but I contacted -- well, I'm not sure who contacted whom.

The next contact was around, I believe, the date that the referrals had been promised, which was around September 1, end of August or September 1 of '93. And I think that they did not arrive on that date. And I may have contacted Jean Lewis to see when they might arrive.

Q Now, during that time period, were you working with an Assistant U.S. Attorney in Little Rock?

A Yes.

158

Q Who was that?

A Fletcher Jackson.

Q When you contacted her on September 1 or around September 1 and requested the information with respect to the referrals, what happened?

A I think she told me that they weren't going to come on September 1, that it was going to be later.

Q And then what is the next action you took with respect to this?

A Well, there was --

MR. BITTMAN: With respect to the referrals?

THE WITNESS: Well, the next action with respect to the referrals was when we received them.

BY MR. GICALE:

Q That's October of 1993?

A Well, I mean with respect to the referrals, yes.

Q All right. With respect to Madison.

MR. BITTMAN: No, we can't -- I mean if there were other contacts with the RTC --

159

THE WITNESS: There may have been conversations where there were updates as to when they might arrive, but basically when they did not arrive, I believe at this point of my testimony, that I had the impression before the first part of September they would arrive by the first part of September.

Now, I could be mistaken, but they did then not arrive until the first part of September, and once I determined they would not, then I was not concerned when they would arrive.

BY MR. GICALE:

Q All right. Now, again, the next contact you had with respect to these was October of the 1993, or that's when you received them?

A We received them, I believe, around the 15th or 20th, 25th maybe of October, somewhere around that date.

MR. GICALE: Off the record.

(Discussion off the record.)

BY MR. GICALE:

Q In late -- in the middle of August 1993,

160

Paula Casey became the U.S. Attorney in Little Rock; correct?

A I think it was around August, sometime in August of '93.

Q And do you know when you first met with her and discussed either the Hale investigation or the other investigation that you were attempting to seek information from the RTC on?

A I don't know when I first met with her.

Q Do you recall whether it was in August 1993?

A No.

Q Were you -- off the record.

(Discussion off the record.)

BY MR. GICALE:

Q In August of 1993, were you aware of plea discussions with respect to Randy Coleman? Plea discussions -- I'm sorry -- with respect to the Hale case and Randy Coleman was the attorney for Mr. Hale?

A I'm familiar with plea discussions, and August sounds about right, but I can't exactly place that time frame for you.

161

Q Were you party to those discussions at all?
A Discussions with whom?
Q Well, with either Mr. Coleman or his client, Mr. Hale, if he ever came in at that point.
A I had a short telephone conversation with Mr. Coleman.
Q And did he -- what did he indicate to you that he wanted to do with respect to a plea?
A I'm not sure he indicated what he wanted to do in respect to a plea. I'm not sure he talked about a plea in that conversation.
Q Well, what did he talk to you about?
A He --
MR. BEN-VENISTE: I'm sorry. Do we have a date for this?
BY MR. GICALE:
Q This is --
A I don't know the date of this. This is sometime --
Q August '93, I think you said; correct?
A Well, no. I said I'm aware that plea negotiations began, and I said I can't place it in

162

August for you. I know they began at some point around that time. The phone conversation I had with Randy Coleman, I also can't place exactly but it would have been more toward -- I believe maybe -- I just can't be sure if it was August or September or exactly when it was. I know that prior to having a telephone conversation with me, I had been told that there had been conversations between Coleman and people in the U.S. Attorney's office.
Q And do you know what occurred in those conversations?
A Well, I'm aware of what people told me occurred in those conversations.
Q What did they tell you that occurred and who was it that told you that?
A I first heard about potential plea negotiations from Fletcher Jackson.
Q What did he tell you?
A He told me that Coleman wanted to talk about Hale's cooperation against significant individuals, and I'm not -- I don't recall that he did say names or didn't say names but it was supposed

163

to be cooperation that would interest the FBI and United States Attorney's office.

And Fletcher Jackson mentioned that he was considering the ground rules that Coleman had. Coleman apparently had mentioned immunity in exchange for the cooperation, and Jackson was mentioning to me, you know, potentially immunity or misdemeanor charges, and he may have said that Coleman mentioned misdemeanor charges as a possibility as well, but I can't be sure.

Q Now, at this point in time, was Mr. Jackson merely informing you of this or consulting with you in terms of what kinds of plea offer or plea negotiations should occur?

A Well, I don't know what his intention was. I took the opportunity to offer my view.

Q Which was?

A That David Hale should plead to some kind of felony.

Q Did Mr. Jackson agree with that?

A I don't think he said whether he agreed or disagreed. I think he indicated that he wouldn't

164

make the final decision.

Q At any time was it agreed between your office and the U.S. Attorney's office that if a proffer was made by David Hale, that it would have to be made to the FBI office or an FBI agent rather than the U.S. Attorney's office in exchange for some kind of a plea?

A I think I heard something like that. I didn't reach any agreements with anybody. It might be -- if you would like me to elaborate on the question you asked a while ago with Randy Coleman, it might help.

Q Go ahead, elaborate.

A Randy Coleman called me at one point and said that he was concerned about the treatment he was receiving in his attempts to negotiate with the U.S. Attorney's office.

Q Do you know if this was after Paula Casey became the U.S. Attorney?

A You know, if I knew when this started, if I knew the date these things started, I could answer that question better. I don't specifically recall.

165

It's my impression that Paula Casey was the U.S. Attorney at the time that phone call occurred.
Q And you don't remember whether it was August or September of '93?
A I don't because I don't know when -- you know, if they started the last week of August, it might have been the first week of September. If they started the 1st of August, it could have been the middle of August, I don't know.
Q In any event, Mr. Coleman was complaining about the ability of the U.S. Attorney's office to come to an agreement with him or their fairness, I take it?
A I think he specifically mentioned Fletcher Jackson.
Q What was his problem with respect to Fletcher Jackson?
A I'm not sure I really know. He just indicated that he wasn't sure that the FBI was aware of the negotiating stance of the United States Attorney's office.
Q Now again, at that point, at the time you

166

received the call, what was their negotiating stance?
A My understanding was that David Hale would have to plea to a felony.
Q And that was consistent with what your position was; correct?
A That's right, yes.
Q And did you tell Coleman that that was the case?
A What I told Coleman was that I as an FBI agent -- that the FBI -- if a proffer was taken, it was my understanding that the FBI is usually present to take a proffer, but as far as negotiations, that it was the job of the U.S. Attorney's office to negotiate those things and that I was not going to become involved in that. But I did tell him that the FBI position as advanced by me to Fletcher Jackson was that his client would have to plead to a felony and immunity and misdemeanor was not acceptable in the FBI's view.
Q And then what happened?
A The conversation ended. There was nothing else for us to discuss.

167

Q Did there come a point in time in early September when you discussed these plea negotiations with Paula Casey, plea negotiations with Coleman with Paula Casey?
A There was an occasion, at least one occasion that I did have a conversation with Paula Casey about the plea negotiations.
Q Do you recall when that was?
A It was after, I believe, the conversation with Randy Coleman. I don't remember exactly when it was.
Q Now, Mr. Hale was indicted on the 23rd?
A Of September.
Q And do you know how -- this occurred before that indictment?
A It occurred before the indictment, yes.
Q Do you know roughly how far in advance of that indictment the conversation occurred?
A No.
Q Paula Casey's calendar reflects some meetings -- a meeting with you on September 13, you and Mr. Whitehead, and a meeting with you and

168

Mr. Whitehead on September 13. Do you know whether or not September 13 would have been the date on which you discussed these plea negotiations with Paula Casey?
A No. We could have been discussing other investigations with her, so the fact that I met with her on the 13th doesn't narrow it down much for me.
Q When you discussed this matter with Paula Casey, what did you say to her and what did she say to you with respect to her position on the plea?
A I think I discussed with her the phone call from Randy Coleman, restated the FBI's position that David Hale should plead to a felony and assured her that the FBI would not attempt to engage in any dialogue with the defense and undercut her office.
Q Did she have a concern about that?
A No. I think that it was just an acknowledgment that Coleman's contact to me could be viewed as an attempt by the defense to split the camp of the government. I'm not saying that's what he was doing, but I was assuring her that it wasn't going to occur.

169

She stated to me her agreement with the FBI position that David Hale should plead to a felony. Either in that conversation or some other conversation, she said that, you know, they stood ready to receive a proffer. The sticking point was -- from what I was told by the United States Attorney's office, the sticking point was that Coleman wanted some assurances and it was unclear to me from the conversations what they were, but he wanted some type of assurance prior to the proffer. And in my experience in the FBI, that is usually not the way that occurs, that a person does not get a guarantee that they will not be charged with something or will receive a certain charge just because they gave a proffer.

Q Is it sometimes your experience in the FBI that defendants or potential defendants are told to make a proffer and that the decision as to whether to plead to a felony or misdemeanor or what type of charge will be made after an evaluation of the proffer?

A I think I had been aware of that occurring,

170

but in this instance, there was a discussion between the FBI office and U.S. Attorney's office, and the FBI view, as advanced by me, was that due to the conduct we were aware of, nothing short of at least one felony count was going to be acceptable. And in my view, it would have been deceptive and unfair to indicate otherwise to the defense.

Q Now, at the time you discussed -- did you have any further conversation with respect to these plea negotiations with Paula Casey prior to the Hale indictment on September 23?

A Well, Randy Coleman wrote some letters, and Paula Casey wrote some letters.

Q Those letters started on September 15 was the first letter; correct?

A I don't know. I know that I may have received copies of either Coleman's letters from the U.S. Attorney's office or I may have been provided a copy of a letter from Paula Casey to Randy Coleman o it may be that at some point these letters appeared in a newspaper. I'm aware that there were letters exchanged.

171

Q Okay. But do you recall whether or not your conversation with her with respect to these plea negotiations occurred before or after those letters?
A No.
Q Did you have a conversation with her with respect to the exchange of letters between her office and Randy Coleman?
A Yes.
Q That was separate and apart from this discussion, the discussion you talked about with respect to the plea?
A I can't say that. I can't differentiate. I have a recollection of my general knowledge of what happened during this time frame, and I can't break it down for certain into two conversations, three conversations. It seems reasonable to me that this would have occurred in more than one conversation, but I can't testify to that.
Q And one of those letters, Mr. Coleman indicated that he had given the names of people to Fletcher Jackson, he had identified certain people that Mr. Hale could assist the government with in

172

exchange for a plea; correct? Do you recall that?
A I don't recall that.
Q Do you recall whether or not Fletcher Jackson ever told you that Mr. Coleman had given him names of specific individuals that Mr. Hale could supply some information with respect to?
MR. BEN-VENISTE: Out of fairness to the witness, if you have a document that reflects the specific individuals that Mr. Coleman was talking about and correspondence with Mr. Jackson or anybody else, perhaps you could show it to the witness, but if you don't have such correspondence, you should also say that.
MR. GICALE: I don't have it with me, I'll say that, but it's not --
MR. BEN-VENISTE: If you have a date in your notes, we can maybe help you.
BY MR. GICALE:
Q It's not a piece of correspondence. Well, was there some point in time when you discussed -- did you discuss certain individuals who you were investigating that Paula Casey felt compelled to

173

recuse herself from, certain cases with respect to certain individuals that she felt that she --

MR. BEN-VENISTE: Object to the form of the question.

MR. BITTMAN: Do you understand the question?

THE WITNESS: I apologize. I'm still thinking about your last question because I thought it was still open. I got confused by what was going on.

BY MR. GICALE:

Q Let's finish the letters.

A I've kind of lost my place.

Q So have I. With respect to the letters, you had a discussion with her with respect to the exchange of letters, and I asked you whether or not you recall any of the letters.

A Okay. All right. I'm not sure about the letters, but I know that Fletcher Jackson at some point indicated to me that Randy Coleman proposed that David Hale could work for us in an undercover capacity and that was also discussed in some

174

discussion I had with Paula Casey. At some point I was made aware that that was part of the discussion from Randy Coleman.

Q And obviously, this had to be done before Mr. Hale was indicted?

A That's correct. Randy Coleman, I believe, was attempting to seek a delay of the indictment, a delay, and wanted -- as part of the reasons for that delay, it's my understanding from conversations with the U.S. Attorney's office that he wanted the opportunity for David Hale to work an undercover scenario, a sting, whatever you want to call it.

Q And what was the discussion you had with respect to that offer?

A Well, I can tell you my discussion. It was two-part. Number one, still a factor to be considered was that coupled with this was, as I understood it, this desire by Randy Coleman to link that offer with potential immunity or misdemeanor, and from my standpoint, I rejected that out of hand.

The other consideration for me was that I did not feel that based on the information I had,

175

that Hale could be as effective as Coleman thought in an undercover capacity.

Q Why is that?

A Based on the nature of the manner in which the search warrant of David Hale's office was accomplished on July 21, it was my opinion that although the search had not been reported publicly prior to his indictment, that the persons close to David Hale would be aware that he was under FBI investigation, and that would diminish any chance for an effective undercover operation and would probably, in fact, generate exculpatory comments during any attempt to conduct consensual monitored conversations or investigations of that nature.

Q Now, why would they have been aware of it?

A When the search warrant was executed --

MR. BITTMAN: Don't go into too many details about that. Just generally, why do you think people would have been knowledgeable about the fact of the search warrant.

THE WITNESS: Well, I mean I can go into some of the details I think.

176

MR. BITTMAN: I don't want you to go into the details of the search warrant. I want you to tell him generally why you think that. If you can't go into generally, I don't want you answering the question.

THE WITNESS: Because I had a conversation with a person other than David Hale in an attempt to execute the search warrant.

BY MR. GICALE:

Q And at least that person would have information or be tipped off to the fact that maybe there would be a warrant?

A There were more than one. There was more than one person aware that we conducted the search warrant at more than one location.

Q So you determined -- as a result of that, you determined that he would not be useful in an undercover capacity?

A I determined that I didn't think it was likely that he would be able to effectively be utilized at the level that the FBI would have wanted. However, not knowing what he thought he

177

could do, I didn't have any information that would make me think that he could.

Q The issue of recusal, did there come a point in time when you discussed with Paula Casey whether or not she should recuse herself from the investigations that you were conducting?

A Yes.

Q When was that?

A I believe in September, a Michael Johnson, who was a first assistant in Little Rock, told me in advance of a meeting that Paula Casey was considering recusing from this case or aspects of this case, I can't remember exactly what he said.

Q And did he say why she was considering recusing herself from this case or aspects of this case?

A I believe it was -- well, I think he did say why, but I don't remember for sure what he said.

Q Now, when you're referring to "this case," which case are you talking about?

A The government fraud case involving David Hale.

178

Q Was a meeting set up to discuss with Paula Casey -- set up to give Paula Casey information --

A Wait a minute, I might need to revise the answer I just gave you. I'm having difficulty -- I think I had notified Chuck Banks's office in August of 1992 that a referral was on its way from RTC, that I had also communicated to the U.S. Attorney's office in 1993 that referrals were on their way. And I believe Fletcher Jackson may have been aware that referrals were on their way, and this topic of recusal may have encompassed the Hale investigation and RTC referrals.

Q RTC referrals including the '92 referral, or just the nine subsequent referrals in 1993?

A Well, I'm not sure I drew a distinction, so -- I think -- I'm not sure, because I don't know what date the conversation about recusal took place.

Q Well, it apparently took place after you -- did you obtain some information about the nine referrals from Jean Lewis in August of 1993?

A I may have.

Q Or did you obtain some information about

179

those referrals prior to actually receiving them in October 1993?
A I may have.
Q Did you obtain the names of individuals who would be mentioned as targets in those referrals?
A Well, if I obtained information, I'm sure that it was the names of the individuals who might be mentioned as targets, but I can't remember -- I can't remember that I did or didn't. I think it's more likely I did.
Q Well, did there come some point in time in September of 1993, and I'm going to direct your attention to September 23 and September 24 when you discussed some specific individuals with Paula Casey who might be either targets or material witnesses in your investigations?
A That was September --
Q 23 or 24, 1993.
A Yes, I believe so. If I have written something that you have, that would help me.
MR. BITTMAN: Let's take a quick break.
(Recess.)

180

BY MR. GICALE:
Q Back on the record again.
Going back to August 20, 1993, I'm going to show you a copy of a document numbered 1542 through 1543, and this is a memo from Steve Irons to SAC Little Rock with respect to an investigation.
A I've reviewed this.
Q At that point in time, did you advise the SAC Little Rock that you had advised the SSA Kendrick in Washington that your office might open a case on Madison Guaranty prior to receipt of the referrals due to information developed, and you refer to the captioned matter, and I take it that's the matter referred to, the subject matter of the memo; correct?
A Right.
Q And did you further state that you had advised Kendrick that the captioned matter had resulted in a subject mentioning individuals common to the October 1992 RTC referral?
A Yes. Yes, I state in here that a subject mentioned individuals common to the October 1992 RTC referral and that refers to this referral known as

181

0004.
Q Now, in that memo you also refer to a Little Rock attorney that had traveled to Washington on that date. Did you learn who that Little Rock attorney was?
A I learned from Fletcher Jackson that a Little Rock attorney was attempting to travel to Washington and in subsequent conversations he advised me that that was Richard Mayes.
Q Was he a partner to Randy Coleman?
A No.
Q Was he representing Mr. Hale at that point?
A Well, not to my knowledge.
Q Now, referring your attention to a document marked for identification as 7719 through 7727, and this is a teletype dated September 17, 1993 to the director from FBI Little Rock. What was the purpose of this teletype?
A Let me take just a moment to review this.
MR. PIERSON: Off the record.
(Discussion off the record.)
BY MR. GICALE:

182

Q Directing your attention to exhibit -- withdraw that.
We've indicated that we are at this point in time not discussing exhibit number 7719 through 7727 after some discussion with the Independent Counsel.
Now I'm going to direct your attention to a document numbered 1545. It's a document dated 10-1-93 to the SAC Little Rock from SSA Steve Irons. You've had a chance to review that memo; correct?
A Yes.
Q Now, was the purpose of that memorandum to advise the SAC about a meeting that you had in Paula Casey's office with respect to her recusal?
A The purpose was to memorialize what had occurred at the meeting. All of the memoranda, with some few exceptions, are addressed to the SAC. That's just the format we use. It doesn't mean that this was -- this was as much for a record to the file as it was to specifically notify the SAC.
Q Okay. And the meeting you are referencing is a September 24, 1993 meeting; correct?

183

A That's correct.
Q It was held at the U.S. Attorney's office in Little Rock; correct?
A That's correct.
Q Who was present at the meeting?
A Paula Casey, Assistant United States Attorney Michael Johnson, AUSA Fletcher Jackson, ASAC Whitehead, Special Agent Reign, Financial Analyst Hall and myself.
Q And what was the objective of the meeting?
A The memo reflects that were two objectives, which is consistent with my recollection.
Q What was the first?
A The first one listed in the memo which was of interest to United States Attorney Paula Casey was to make a determination if she would have to recuse herself from -- the memo reads "the matter," that would refer to the government fraud case, due to her close friendship with Jim Guy Tucker, Seth Ward and Steven Smith. And another objective was for the Bureau to discuss some objections it had, suggestions in regard to how the investigative efforts could be

184

better coordinated.
Q With respect to the first objective, did you take an opportunity to describe in some detail the involvement of Tucker, Ward and Smith in the investigation?
A Yes. Based on my review of the memo, both myself and AUSA Jackson discussed the involvement of Tucker, Ward and Smith.
Q Now, again with respect to which investigation?
A The investigation of David Hale and his company, the government fraud investigation.
Q And as a result of your describing the involvement of Tucker, Ward and Smith, what did U.S. Attorney Casey agree to do, advise that she would do?
A USA Casey advised she would have to recuse herself and only had to decide the best time to do so.
Q Now, at some point in time did she -- do you want a moment?
A Yes, if I could have a moment.
(Pause.)

185

Q So as a result -- so as a result of supplying some information to USA Casey, she indicated she would recuse herself and only had to decide the time to do so; correct?

A That's correct.

Q Why did she indicate to you that the timing was of concern to her?

A I'll read from the memo. "She referenced claims made by subjects David Hale and media outlets that she was being unfair due to her political or other affiliations. While she resented those accusations and realized recusing herself might be misinterpreted by some as giving merit to Hale's accusations, Casey felt she must not hear any details concerning the above individuals. However, she saw no immediate need to publicly advise of her recusal and preferred to wait until a more opportune time from a public relations standpoint. AUSA Johnson also discussed the possibility the Department of Justice would take all or part of the case due to the mention of Bill Clinton by Hale."

Q By this point in time there had been some

186

allegations in a newspaper that Hale apparently had made with respect to Bill Clinton and Jim Guy Tucker and some others; correct?

A That's correct. I think that the first article I'm aware of was around the date of his indictment, September 23, specifically an interview with someone that was printed in the Little Rock newspaper.

Q Now, I know that you've just read this, but does that refresh your recollection as to what her rationale for not recusing at that particular point in time was, publicly? Not publicly recusing at that point?

A There was -- well, I think as the memo states, that she didn't want to be -- appear to be caving in to Hale or take any action that made it appear that she was in agreement that she was being unfair.

Q Now, do you know whether she was advised that these individuals, Tucker, Ward and Smith, were subjects in August of 1993 or earlier in September 1993?

187

A No, I don't remember that right now.
Q Do you know whether or not she stated to you prior to this discussion that if Tucker was mentioned, she did not want to hear any details with respect to any investigation involving him?
A I don't remember if she said that before this.
Q In any event, then, do you recall whether or not she excused herself from listening to any further details with respect to this investigation at this point?
A To my knowledge, in this meeting after she made those comments and after the FBI had talked about some investigative concerns, she left the meeting, and myself and ASAC Whitehead left the meeting and Michael Johnson, Fletcher Jackson, Agent Reign and Financial Analyst Hall remained behind to discuss the investigation.
Q Was it your understanding, then, after this meeting that with respect to these individuals, she had recused herself and that she would not subsequently receive detailed information with

188

respect to them or any investigation relating to them?
A What she advised is that while she had not publicly announced her recusal, she had effectively recused herself internally within her office and would not receive information.
Q Now, from September 24, 1993 forward, do you know whether or not that was the case, whether or not she did receive additional information with respect to these individuals?
A I'm not aware of her receiving information.
Q Do you know whether or not she received the nine additional criminal referrals?
A I don't know if she personally saw those referrals. I think her office may have received those referrals.
MR. BEN-VENISTE: Really, I have to object to asking this witness, since Ms. Casey has been deposed over an extensive period of time. We have all of her files. It's really not necessary to learn from this witness.
MR. GICALE: Well, to the extent -- his

189

testimony is relevant to the extent that she received any additional information at a point in time after she says at least to him that she has recused and other things occurred.

THE WITNESS: I recall meeting with Michael Johnson to discuss the additional referrals, and Paula Casey was not present. And it's my impression that she was not involved in those meetings with FBI personnel.

BY MR. GICALE:

Q Did you become aware at some point in time in early October that the director of the FBI had indicated that he thought that she should recuse herself from these matters?

A No. I don't recall that.

Q What is the next time you had some contact to Jean Lewis in this investigation after -- in September or October of 1993?

A After this meeting of September 24?

Q Yes, to the extent you can remember.

A I remember that the referrals were received around October 15. I don't remember a specific

190

conversation with Jean Lewis in connection with the receipt of those referrals, but it's possible they were preceded in their arrival by a telephone call.

Q Did you subsequently become aware of --

A I think also I would like to add, during that time and from referring to this memo of October 1, and it refreshes my recollection, the FBI was trying to obtain documents from Madison Guaranty Savings & Loan, and there may very well have been communications between myself and Jean Lewis, or at that point it may have been persons under my supervision and Jean Lewis. I just can't recall specific --

Q Do you recall a point in time in late October when Paula Casey sent a letter declining the original referral, the 1992 referral?

A Yes.

Q Did Paula Casey -- well, withdraw that. How did you learn that Paula Casey had declined that referral?

A In a telephone call with Paula Casey.

Q She had discussed the matter with you prior

191

to declining it?
A She discussed -- she advised me that she intended to send a letter, and I believe that she quoted some parts of the letter to me over the telephone.
Q Now, aside from quoting those parts of the letter to you over the phone, what did she say to you? What did she say to you?
A She told me that Jean Lewis had been in contact with her concerning the status of this referral, 0004. She told me that the Department of Justice had apparently -- and I don't know if she said had declined that referral or said something to the effect that they would understand if Little Rock United States Attorney's office did, and she was adopting that position and was going to so notify Jean Lewis. And we had a discussion as to -- she had a discussion with me as to whether that would negatively impact our current efforts at Madison.
Q And what was your response?
A I told her it would not. The letter, as I recall, advised Jean Lewis that this was something

192

that had been resolved or examined prior to Paula Casey being named.
I talked with Paula Casey about the fact that the nine subsequent referrals basically reincorporated a lot of the allegations of 0004. I'm not sure they listed the Clintons as witnesses. And I sought assurance from Paula Casey that her declination did not mean that we would not consider the information contained in 0004 as part of the investigation that would be conducted, and she agreed with that and in her letter I believe said that if information was received in the future, that she would reconsider her position as related to that referral.
There was also a paragraph in there at the end about access to records. To put this in context, we were having a difficult time obtaining records from RTC at the time, and I think Paula Casey's explanation was two-part.
One is that this was a decision that other experienced people had apparently reached, that giving Jean Lewis this answer did not indicate any

193

diminution of the efforts of her office in the investigation of Madison, and this was also intended to be somewhat of a signal to the RTC that if they were going to send us referrals, that they should provide us access to records so we could effectively investigate the referrals.

Q So by virtue of this discussion, you did not believe your investigation with respect to the first referral was concluded but rather became part of the other nine referrals; correct?

A That's correct.

Q That they were related?

A Well, the investigation of Madison would include any information we had about Madison from any source, so that would obviously include 0004. The 0004, by Jean Lewis's own description in some conversation with her previously, was her response to our telephone conversation in October of '92 where I said it would be helpful to us to have more detailed referrals, and her description of those nine referrals, before we received them, is that these are much more detailed referrals concerning Madison.

194

Q In an attempt at trying to be responsive to your request in October of 1992?

A Well, yeah. I mean, you could ask her, but it was to -- one of the things I discussed with her was that further details would have been helpful back at that time, and these referrals were certainly more detailed.

Q In any event --

MR. BEN-VENISTE: Is this an optical illusion or is the pile of documents in front of you with which you are going to question the witness larger than it was previously?

(Laughter.)

MR. GICALE: No, it's not larger. But I'm at November 9 almost, so it's almost over. It's almost over.

THE WITNESS: Shucks.

BY MR. GICALE:

Q So then, therefore, you had no objection to the letter because from your perspective you --

A I told her I had no objection because she had assured me that it did not mean that if we

195

developed information as part of our investigation that included and related to allegations in 0004, that it would still be pursued.

Q Now, at some point subsequent, you learned apparently that Paula Casey was asked to recuse herself or had a meeting in the Department of Justice in Washington and was asked to recuse herself from these matters?

A Yes.

Q And she in fact did, and Mr. Mackay was appointed to take over the investigation of the matter; correct?

A That's correct. That's correct.

MR. GICALE: I just need one minute. Off the record.

(Discussion off the record.)

BY MR. GICALE:

Q Now, between the time that you discussed the plea offer in the letters between Mr. Coleman and Ms. Casey and Mr. Johnson in September 1993 and the time period when Mr. Mackay took the investigation over, were there any other discussions with respect

196

to a plea with respect to Mr. Coleman and Hale?

A Yes. I believe that around November 8 there was what somebody, Michael Johnson maybe or Paula Casey, described to me in terms of a surrender meeting, and they felt they were close to reaching a plea agreement with David Hale. And at that point, it had not been announced that Paula Casey was recused and was being replaced by DOJ. And I think as a matter of -- she expressed to me that as a matter of personal pride, she would like to obtain that plea prior to recusing herself.

Q However, those negotiations did not continue in light of her recusal, I take it?

A They did not. They did not. She was no longer in a position to negotiate on behalf of the government.

Q And I take it by that point in time, you had received copies of the other nine referrals and you had incorporated those into your investigation?

A Yes, those were incorporated into our pending investigation.

Q Were there any other plea discussions

between that period, September 1993 and November 8, that you're aware of?

A No.

MR. GICALE: I have nothing further at this point.

MR. BEN-VENISTE: In the remaining half hour before our agreed-upon break this evening before we resume, I would like to ask some questions relating to the inception of the investigation by Ms. Lewis, to the extent that you first learned about it.

EXAMINATION

BY MR. BEN-VENISTE:

Q If I understand you correctly, in late March or early April of 1992, you were advised that Ms. Lewis had been directed by someone in her agency to review the Madison files; is that correct?

A Correct.

Q And she soon thereafter visited the FBI office in Little Rock to confer with Gary Aaron, who was the case agent for the prior trial of Mr. McDougal and others?

A Correct.

Q You had not been in the Little Rock office at the point of Mr. McDougal's trial; right?

A That's correct.

Q But if I understand your testimony, it appears that you were a highly experienced white-collar crime investigator with over a decade of experience with the FBI investigating white-collar offenses?

A I've stated my background.

Q With respect to your specific involvement in reviewing RTC referrals, would it be fair to say that you had reviewed, up until the time you dealt with Ms. Lewis, scores and scores of such referrals?

A No, that would not be correct.

Q Okay. Well, then in terms of your experience with bank fraud investigations, could you explain what that was? Sometimes it's not helpful to try to save time.

A I had worked bank fraud cases for a period of several years, had worked on a bank failure case prior to being named supervisor of the white-collar

199

crime squad, and as the supervisor, I was responsible for opening all the bank fraud cases for which complaints were received in Little Rock. And as part of that process, I would review the referral from FDIC or whatever the regulatory agency was.

Q And can you say how many bank fraud investigations you had been involved with as an FBI agent prior to late 1992?

A Is your question both as a supervisor and as an investigator?

Q Yes.

A I would have to approximate. I would say at least 100.

Q Now, Ms. Lewis told you that she had spoken with Mr. Aaron about the earlier investigation and trial; is that correct?

A I believe that is correct.

Q And the conversation which you had with Ms. Lewis at that point was in your office?

A I'm not sure of that. It could have been a telephone conversation.

Q And was she asking you for something?

200

A I don't remember.

Q At that time, had you spoken to Ms. Lewis before?

A Yes.

Q And that had occurred back in December of 1991, hadn't it, when she was party to conversations wherein the FBI office in Little Rock helped prioritize, at least from the FBI's standpoint, what their interest was in criminal investigations involving bank fraud in that area?

A I had discussed with her our suggestions for what the priority for their review of failed institutions should be, yes.

Q And how did you arrive at your priority list?

A Well, based on several factors, one of which I alluded to earlier, and that is a desire at that time on the part of the Department of Justice to recover monetary fines and penalties when possible. I obtained from RTC a list of failed institutions for which they intended to conduct examinations. I excluded from that list institutions for which there

201

had already been investigations conducted by the FBI in Arkansas.

I then considered the date of failure of the institution, which gave me a rough estimation of the statute of limitations, and considered the amount of dollar loss for the institutions. I also considered any informant information, confidential source information I was aware of.

Q That kind of folded into the question of whether the FBI generally had information about whether the banks were clean or dirty?

A On one of the institutions for certain.

Q Let me show you what has been Bates stamped 4594 and ask whether this is a referral schedule that incorporated the kind of priorities that you had just described.

(Witness reviewed the document.)

A Yes, this is accurate. This refreshes my recollection that I did have an interest besides two particular institutions and yet another one, which is Capital Savings & Loan, and that's an institution that I had investigated prior to being promoted as

202

supervisor. And I was asking her assistance in that one because it might help our trial effort.

Q Now, with respect to the priorities list, can you say which of the institutions that are reflected on 4594, which also has a designation S/AT 50, which of those Ms. Lewis, to your knowledge, in 1992 had primary responsibility for?

A Well, based on my conversations with her as of the middle of March of 1992, she had been concentrating her efforts on, I believe, Savers in Little Rock and First Federal in Little Rock. As of sometime in mid-March or early April of '92, her focus shifted to Madison in Little Rock.

Q Now, I take it that shift was not at the direction of anybody involved in either the Department of Justice or the FBI; is that correct?

A Not that I'm aware of.

Q Now, in terms of Savers of Little Rock, what was the reason that that was high on the list of your priorities?

A I had received what I considered to be reliable information that it was an extremely dirty

203

institution.
Q And what about the size of loss that the bank had experienced?
A I don't remember the size, but I know that with Savers and First Federal, one of them is approximately $950 million, and I think the other one is like 750 million.
Q Yeah, I think you've got the numbers right for First Federal being the largest, the larger of those two, and Savers being second.
So let me ask you about First Federal of Little Rock. That was clearly a priority on your list as well; is that right?
A Yes, and -- yes.
Q And what were the reasons for that, aside from the near billion dollar loss?
A I can't recall now if I had specific or general information about it being a dirty institution, but I would -- it could have been that I was aware -- I don't know. Basically, I'd say that the thing I recall was the amount of money.
Q Let me see if this refreshes your

204

recollection with respect to the amount of money. I hesitate to put words in your mouth, but since we have a document which was prepared by you, I'll show you FBI 528 on the point of the two failed institutions that you had identified.
A I see this.
Q And is that consistent with your -- does that refresh your recollection as to the size of the losses at First Savings and Savers Savings?
A Yes.
Q That was 900 million First Savings and 630 at Savers Savings, according to your contemporaneous communication of 16 October '92?
A Based on the information I had, those were figures that this been publicly released as loss figures. There may have been disagreement between agencies involved, but that was a figure that I had seen publicized.
Q Now, in terms of the priorities that you have described here today that the FBI was employing both in connection with its own investigative priorities and rationale, as well as the additional

205

Congressional input that had been received that you have testified about, can you say whether in view of the size of the loss of Madison and the likelihood of obtaining any sort of funds from the individuals who may have been responsible for the losses, whether that would have ranked high on the list of priorities?

MR. BATES: As of what date are we asking this?

BY MR. BEN-VENISTE:

Q Late 1992.

A Well, by late '92 we had received a referral, so that would have changed my opinion on the list of priorities. At the time that list of priorities was determined, the referral had not been received and I was acting on a combination of any information I had about an institution being dirty and the size of the loss.

And as I think I previously said, I had made an assumption that an institution that had been the subject of previous prosecutive effort would not be as desirable to the United States Attorney's

206

office and those had been discounted on my list.

Q Right. So that had not someone else reordered the priorities, you would not have done so on the basis of information that you knew up until late 1992?

A I'm not sure I can say that.

Q Well, let me put it another way. When Ms. Lewis received whatever directive that she said she received in March or April of 1992 to begin her investigation of Madison, was there any reason that you knew of based on the criteria that you have described as to why Madison would be bumped ahead of the other institutions that you had discussed with Ms. Lewis and others at the RTC?

A You're asking prior to March of 1992?

Q Right.

A I'm not aware of any reason.

Q Can you provide any reason as to why the RTC would have done so, other than the fact that there had been this newspaper story that had come out that had linked Governor Clinton to the Madison Bank and its principals?

207

A Well, I can't speculate as to why RTC did what they did, other than to repeat that Jean Lewis told me that her superiors had redirected her to Madison based on a newspaper story.

Q So in your conversation with Ms. Lewis, she referenced the newspaper story?

A I am fairly certain she did. I'm not absolutely positive.

Q Now, from the time that you first had your conversation with Ms. Lewis when she wanted to interview Mr. Aaron and look at documents in the Little Rock area until you received the first referral from her, approximately how many times were you in contact with her about her progress in connection with the referral?

A I think today I've testified to probably two or three or four contacts, and I've testified to all the contacts that I recall.

Q And had you had contact with Ms. Lewis about other institutions which you had previously prioritized during that interim period?

A Yes.

208

Q And could you provide in summary form what you had discussed with Ms. Lewis about those other institutions in that time frame, from March to, let's say, the end of August?

A Well, on at least one occasion during that time frame, I noted to her that I had made a previous request that Savers and First Federal be addressed.

Q And what did Ms. Lewis respond to you?

A She advised that her superiors had directed her to shift her efforts to Madison.

Q So did she say whether anyone had been assigned to the Savers or First Federal matter since she had been reassigned to Madison?

A She did not. She was, I believe, the only examiner. RTC did not have a lot of investigators -- investigators, not examiner, for our region, and she may actually have covered a couple of states, so I don't know that she would have had to say anything. I was not aware there was another examiner available -- or investigator available to look at those, so the impression I had is that she would have to get to them later.

209

Q Now, was there a prosecution of anyone associated with Savers?

MR. BATES: Could we limit the answer to that up through January of 1994?

MR. BEN-VENISTE: No, no, up to and today, whether there's been an indictment.

MR. BATES: Anything public, that's fine.

THE WITNESS: I'm not aware of anything that may have occurred before I became the supervisor and became aware of what was going on in Little Rock. There may have been a recipient of a loan at Savers that was prosecuted, but I'm not aware of any indictments as a result of an RTC referral since 1992.

BY MR. BEN-VENISTE:

Q Right. So from 1992 until today, to the best of your knowledge, no one associated with running that institution or substantially dealing with that institution has been indicted for any fraud that may have occurred in that institution?

A That's correct. I'd have to qualify, related to activities in that institution. There may

210

be individuals that were related to more than one institution.

Q Okay. Now, is it correct that at some point, you asked what was happening to these other institutions so that you would be apprised of whether you were going to get any assistance from the RTC with respect to them, aside from the conversation you've indicated?

A Well, there was -- I asked our headquarters in the fall of 1992 to inquire at a headquarters level at RTC in Washington as to when we might expect referrals.

Q And was that because you weren't getting anywhere in terms of your own efforts to get the RTC to focus on the institutions you thought warranted investigation?

A Yes.

Q And by asking the agency more or less at the top levels to contact the RTC more or less at the top levels, you felt that you might get something going in a positive way where you felt you'd been stalled?

211

A Well, I don't know that I would say we'd been stalled. RTC had made a decision to redirect Jean Lewis to Madison. A referral had been received for Madison. The United States Attorney had basically put this matter in an inactive status, it was in abeyance. Based on that, while that may not have been communicated to RTC, I wanted RTC to move on past the Madison referral and work on other matters.

Q Were you interested in obtaining any documentary information that Ms. Lewis might have come across or the RTC might have come across in 1993 relating to Savers Savings and more specifically relating to any allegations of fraud involving Savers Savings?

A I don't recall that.

Q Do you recall whether you would have been interested in receiving any such information?

A We're always interested in receiving any information.

Q If, for example, somebody had come to the RTC or to Ms. Lewis and said "I know about fraud in

212

that institution, I've dealt with the people who have conducted the fraud, I have a bunch of documents that I would like to give to you," would you have liked to have known that fact contemporaneously?

A It would not have displeased me.

Q Would it have displeased you if you knew that Ms. Lewis had received such information from such a person and had not communicated that to you in 1993 prior to the time that you sent your memo along to Washington?

A Well, you're asking me to speculate on what I would have thought back then.

MR. GICALE: And I object to the speculation. I mean if he knows that it happened and he's got some comments or some thoughts that he expressed to her as a result of it --

BY MR. BEN-VENISTE:

Q Okay. Let me put it another way. As you sit here today, have you learned from any source that Ms. Lewis received such information from such a person as I have described earlier relating to Savers Savings?

213

MR. BATES: Technically, the deposition is limited to the knowledge he had as of January 1994 on some subjects and November 1993 on other subjects.

MR. BEN-VENISTE: I don't think it applies to this.

MS. SIMONTON: I would like to talk to him, then, to see if we're getting into an area concerning a confidential source or pending investigation of the FBI, because I don't know the answer to the question, and it's conceivable --

MR. BEN-VENISTE: What I'm asking again is whether Agent Irons received information from any source that Ms. Lewis had obtained such documentary information from such an inside type of person in 1993 or whether such information would come as a surprise to him, even today.

THE WITNESS: Wait a minute. You asked me about 1993 and then you said today. I'm getting confused on the time.

BY MR. BEN-VENISTE:

Q Would it come as a surprise to you even today? You said you didn't know about it in 1993.

214

(Discussion off the record.)

THE WITNESS: As I sit here today, I don't know if she received information.

MS. SIMONTON: Makes it a lot easier if I can find out what the answer is.

MR. BEN-VENISTE: From Agent Irons's prior answers, I suspected that that was the case and indeed from the basis of the information that I have --

THE WITNESS: I would like to add that I didn't advise Jean Lewis of FBI source information, and I would always be glad, as I said, not displeased, to receive it from them. I wouldn't have felt like that they had an affirmative obligation to tell me as soon as they got it.

BY MR. BEN-VENISTE:

Q Well, let me continue on and see how you would feel under this fact scenario, where Ms. Lewis had received such information regarding Savers Savings, had received the documents that the individual providing the information said would establish fraud and had written a letter to an

215

Assistant United States Attorney, commending that individual for cooperating in connection with providing that information, and you still hadn't received any knowledge of that. Would that disturb you as you sit here today?

A What's the story on the "as I sit here today"? I need to know this.

Q You're sitting here today. Would you be disturbed to know that Ms. Lewis had received information from an individual who had approached her as an RTC criminal investigator and provided her with documentary information regarding Savers Savings and fraud at that institution, and had written a letter to an Assistant United States Attorney, commenting upon the cooperation that that individual had provided to the RTC?

MR. BATES: I think we're going to limit this deposition to what the scope of our agreement is, and this seems to me to be outside the scope of the agreement, particularly since the question doesn't even ask what he knew at any time, it just asks for a speculation as to how he would react today

216

to something if it were true, and certainly that's beyond the scope of a deposition, the agreed-to contours of which are his knowledge as of a specific date almost two years ago.

MR. BEN-VENISTE: Well, we've established, I think, that Agent Irons as he sits here today had not heard of this series of events.

MR. GICALE: And therefore he has no knowledge. And I mean I would agree, I mean I just believe that this is not relevant and it's beyond the scope. We're talking about speculating. He's already admitted he --

BY MR. BEN-VENISTE:

Q Let me put this a different way. In view of the communications that you have made in 1991 and again in 1992 about your interest in the RTC pursuing, among other things, an investigation of Savers Savings, would you not have expected Ms. Lewis to advise you if she had received documentary evidence from an insider who claimed to have evidence of fraud at Savers Savings?

A I would not have been displeased.

217

MR. BEN-VENISTE: It's 5:00. Pursuant to our earlier agreement to try to, if we can, finish this investigation this evening, we're going to adjourn until 7:00.

(Whereupon, at 5:04 p.m., the deposition was recessed, to be reconvened at 7:00 p.m. this same day.)

218

EVENING SESSION (7:10 p.m.)

Whereupon,

STEVEN D. IRONS

resumed the stand and, having been previously duly sworn, was examined and testified further as follows:

EXAMINATION (Continued)

BY MR. BEN-VENISTE:

Q In your memorandum which has been Bates stamped 1529, it's dated August 26, 1992, you were advised by Ms. Lewis, you say, that referrals on Savers Federal Savings would be provided within several months. Do you recall that?

A Yes.

Q In addition, you mention again First Federal as being a priority institution for you for RTC to assist you; is that correct?

A That it continued to be a priority as we had indicated to them earlier.

Q I would like you to comment on page 3 of the same memorandum in the first paragraph where you say "many of the failed Arkansas institutions have been closed for periods approaching five years. Per

219

bureau instructions to all offices as set forth in a directors teletype to all offices dated 5-1-92, captioned 'Financial information fraud and failure matters,' Little Rock has not opened fraud cases on failed institutions absent an official referral."

You go on to say "liaising has already been affected with the regulatory agencies that audited the institutions who advised they would have referred any questionable activity at the time of their audits. Little Rock is not in a position to influence the manpower assigned by RTC to author such referrals nor the speed at which the work is conducted."

Why was it that you included that paragraph?

A Little Rock was in a situation where we were underutilizing agents in the area of financial institution fraud investigations. That did not mean that we were not utilizing the agents. It just meant they had been reprogrammed to other areas of white-collar crime.

This is an explanation to our headquarters

220

that Little Rock has done all -- Little Rock feels like it's done all it could within its power to attempt to obtain work on cases it can investigate. And I think this demonstrates that the lack of bank fraud cases was not due to a lack of desire or initiative on the part of Little Rock.

Q Now, was it the case that you felt constrained as a supervisor of agents in white-collar and financial crimes in the Little Rock office by a policy that did not allow you to initiate the investigation into failed banks until such time as you received information from regulatory agencies relating to those institutions? And in that regard, let me ask you to look at the last paragraph on page 4 of your memorandum.

(Witness reviewed the document.)

A Your question is did I as Little Rock's supervisor feel constrained from pursuing cases absent referrals from my regulatory agency?

Q Yes.

A The answer is yes, I was constrained. I believe that not too long after the date of that,

221

headquarters may have changed its policy.
Q Now, I picked two out of a number of institutions which had been prioritized in the memo that I had shown you earlier as examples, but let me ask you, Ms. Lewis said that a referral would be coming from Savers within several months. This memorandum was written in August of 1992.
Did you ever receive a criminal referral with respect to Savers?
MR. BITTMAN: Well, can we limit it to through January 12, '94?
MR. BEN-VENISTE: Well, I think on that one, yes.
THE WITNESS: I don't believe so.
BY MR. BEN-VENISTE:
Q And did you ever receive a criminal referral regarding First Federal?
A Through January of 1994, I don't believe so.
Q Was there an indication that in addition to talking with you about an anticipated referral on Madison, that you learned that -- strike that.

222

As of mid-August, if I understand your testimony, mid-August of 1992, you had learned from Ms. Lewis that her supervisors had given her a deadline of August 31, 1992 to complete a criminal referral on Madison Bank. Was that the case?
A Yes, sir.
Q What did this mean to you in terms of that information? What did that information convey to you?
A It conveyed to me that I could expect a referral on or about the 31st of August.
Q What did it convey in terms of what was going on at the RTC?
A That Jean Lewis's superiors wanted her to furnish the referral by the end of August.
Q Did that imply anything beyond Jean Lewis's superiors?
MR. GICALE: Objection. Unless he knows or has some information. I mean I don't think there's a foundation for him to answer a question like that.
BY MR. BEN-VENISTE:
Q You can answer.

223

A The only information I have is what Jean Lewis told me, and that is that she had an internal deadline of August 31.
Q So you didn't feel one way or the other about whether this went any further than Jean Lewis's superiors, immediate superiors?
MR. GICALE: You know, again I would object. I mean his feelings are irrelevant. He's got to base what he knows --
MR. BEN-VENISTE: It may be to you, but I care deeply about Agent Irons's feelings.
MR. GICALE: His feelings with respect to that deadline.
THE WITNESS: I'm sorry. Ask the question again.
BY MR. BEN-VENISTE:
Q Did what she was telling you imply anything in your mind about anything beyond her immediate superiors?
A I can't say that I can make an implication based on that.
Q Okay. Were there other things that she was

224

telling you that gave you reason for concern?
A Yes.
Q And what were those?
A She had made a comment that the referral -- she had passed up a job opportunity to work on the referral and that it might change the course of history.
Q What did that mean to you in terms of your concerns?
A Well, that meant to me that Jean Lewis felt like the referral was going to -- was going to point out information concerning the high profile people that she talked about before, i.e., the Clintons, and that she felt like that when it was received, that we would feel like it was important information.
Q Did it make you feel like she was very heavily invested in this referral going somewhere?
A Well, I felt like Jean Lewis, this was probably the biggest case as far as high profile people that Jean Lewis had been involved in, and she had a commensurate level of excitement or interest because of that.

225

Q In terms of listing who the witnesses might be in a situation where a criminal referral comes in, does the FBI need to know from the criminal investigator at the RTC necessarily in the criminal referral who the witnesses might be?

A If I recollect, the referral is a form, and it has areas both to list suspects and witnesses.

Q Did you feel that you needed to know the witnesses in that case on some form?

A Well, I don't know that I considered what I needed to know on the form. I just accepted the form.

Q Well, let's talk about what made it so sensitive. If the Clintons hadn't been listed as witnesses, would that have ratcheted down the level of sensitivity some?

A If I knew that the Clintons were witnesses and they simply weren't listed as witnesses on the form, there would still have been a level of concern for me. The fact that they were listed on the form and the form had been sent to several places meant that the potential for disclosure was increased in

226

that a person who wasn't aware of their involvement without reading it on the form would become aware of that.

Q What does it mean to be a witness to a check-kiting?

A I think in my view to be a witness is to be somebody who can furnish information about activity that occurred.

Q Was there any information contained within the referral itself that would indicate that the Clintons were indeed witnesses to the check-kiting?

A Based on the review that I testified I conducted earlier, I wasn't able to determine any information that I felt indicated they were.

Q And coupling the review and analysis of the substantive information, as you've done regarding this, with what Ms. Lewis was saying about changing her career plans, giving up another job and thinking that her involvement with this referral might change history, did you think that the potential was there for Ms. Lewis to perhaps exaggerate the importance of the Clintons to all of this?

227

A I think that Ms. Lewis -- the burden of proof that Ms. Lewis operates under for her level of evidence that she meets to generate a referral is not similar to the level of evidence that an FBI agent would consider would be that that would result in an indictment.

Q I think that's a good answer, but respectfully it's not the answer to the question that I asked.

A Why don't you ask me the question again.

(The reporter read the record as requested.)

THE WITNESS: I'm not sure what the potential was. She had listed on a referral and stated what she thought the involvement of the Clintons was, and I've said that based on my review, that I didn't agree with the characterization that they were necessarily aware of the check-kiting activity.

BY MR. BEN-VENISTE:

Q Was there anything else that you learned about Ms. Lewis's activities that gave you further reason for concern as the case progressed?

228

A There was one particular thing that gave me concern in the fall of 1993.

Q And up until that point, was there anything else in terms of the nature of contacts, the frequency of contacts or anything else that gave you concern?

A Well, I was careful and cautious as evidenced by the fact that I documented the contacts with Jean Lewis throughout that entire period, and I think that I viewed her continued attempts to try to ascertain the status of the investigation as sort of an annoyance, and I really felt like, not that she could be blamed, but not being involved in law enforcement, I don't think she realized the FBI's concept of a need to know.

Q Well, what is that concept? Strike that. Did you not attempt to explain that to her?

A In a very tactful way.

Q And did she continue to call?

A Well, I think I explained that to her in the fall of '92 and I'm not sure how frequently she called, but she didn't call as frequently after that.

229

Q Well, she called in early September after the referral; correct?
A Correct.
Q Now, according to the chronology in Ms. Erickson's file, which is 1526, et seq., it's indicated that Ms. Lewis began to call right after the referrals were sent over. What does that mean in terms of the frequency at that point?
A Can I see that document?
Q Sure.
A "Began to call" means that within the next few days, I received the first phone call and the reason I said "began" is that other phone calls followed and those are listed in this chronology also.
Q Okay. Well, let's track that, because this isn't -- did you prepare this chronology?
A Yes.
Q Then we can save a lot of time. When I asked you before about the implication of what she was saying in terms of the deadline she was given to submit the referral, she told you after she had

230

submitted the referral first that her supervisor had told her to keep asking about what was going on with the referral, and that was still in September of '92; is that right?
A That's correct.
Q And she told you on one occasion in September of 1992 that in your words, "everyone above her in RTC was aware of the referral and that it was approved at Washington before being sent out"; correct?
A Correct.
Q Did you credit what she was saying or did you think she was exaggerating?
A I credited what she was saying. I would think on a -- in the FBI, something that sensitive would very likely be reviewed at higher levels.
Q And she advised you that she was apologetic for asking repeatedly about the status of the referral but told you that she was doing so as the result of instructions from her superiors.
A That's correct.
Q It got to the point where you told her to

231

deal directly with the U.S. Attorney's office and not to call you?
A That's correct.
Q Did you receive information from the U.S. Attorney's office thereof that she began calling them to find out what was going on with respect to the referral?
A I received information at least on one occasion she called them.
Q Did Mr. Dodson advise you that Jean Lewis was calling him and that she said that she didn't mean to pester him but that it was standard to make a follow-up contact six weeks after any referral to find out that it was received and to see whether any clarification or assistance was needed?
A Mack Dodson told me that.
Q I'm not going to go into areas covered by Mr. Gicale about the reasons why you and your superiors in Little Rock felt that you ought to treat the referral in the way that you did.
Let me ask you this. In your experience, prior to this time, had the FBI been provided copies

232

of documents that were sent along with the referrals? In the Madison case, the documents went to the U.S. Attorney's office but not to the FBI; correct?
A That's correct. On 0004. The only referrals that I handled prior to that dealt with a savings and loan in Paragould, Arkansas, and those referrals had been provided I think around the time frame of December of '91. And I don't recall whether there were exhibits contained with those referrals or not, so I had not received enough referrals for me to say there was a standard policy as to whether or not exhibits would be included to the FBI as opposed to the U.S. Attorney's office.
Q You responded to Mr. Kendrick in the way that you testified earlier when he inquired as to what was going on in Little Rock with respect to 0004, and then you testified that you received a message from him -- when I say "you," Little Rock -- received a message that said "an FIF investigation is warranted in the captioned matter. Therefore, Little Rock should initiate a limited investigation aimed at

233

determining the extent of violations as alleged in the Resolution Trust Corporation criminal referral form dated 9-1-92."

In that document, which is FBI 523, et seq., the directive is given not to conduct overt investigation involving witness interviews or serving subpoenas; correct?

A Correct.

Q You weren't about to serve any subpoenas because the U.S. Attorney's office was telling you they weren't going to issue any or ask the grand jury to issue any?

A That's correct.

Q So that was a level of agreement with the course of conduct that you all had discussed in Little Rock in the Little Rock office?

A Yes.

Q So you had this stamp of approval by reason of this message?

A I had the stamp of approval from who or what?

Q From headquarters as to the fact that

234

you -- agreeing with your determination not to conduct an overt investigation.

A Correct.

Q Did you learn from any source how it came to be that headquarters learned that a criminal referral had been sent to the U.S. Attorney's office and to the FBI at Little Rock?

MR. BITTMAN: We'll limit that to your knowledge prior to January of '94.

THE WITNESS: Well, SAC Pettus after the time frame of September 1, possibly after the time frame of October 16, I believe advised me that somebody -- he had heard that potentially somebody at RTC had spoken to an individual by the name of Ira Raphaelson. I'm not sure if Raphaelson was part of the Department of Justice or how that -- if it had to take another step to get to DOJ or not.

BY MR. BEN-VENISTE:

Q He was a part of the Department of Justice at that time. Did SAC Pettus say who at RTC had brought this to Mr. Raphaelson's attention?

A I don't recall him saying anything.

235

Q Any indication, by description or otherwise, it was a Washington person?
A I don't believe it was Washington. I'm not certain, but I want to say that -- I don't know. I seem to recall something out in the west, Arizona or New Mexico, but what it could have been was Mr. Raphaelson was out there when he heard about it and called from there. I'm just not sure.
Q But you learned that -- and this is from Mr. Pettus -- that perhaps at a time when Mr. Raphaelson was traveling out of Washington, he had learned from someone at RTC, who might also have been traveling, I guess?
A I'm just not sure. The name I recall as being involved in the initial -- a government employee, potentially DOJ, was Raphaelson. I'm not -- I would be stretching to say that he was traveling or he wasn't traveling. I just don't know.
Q A check-kiting case involving an individual who had been previously prosecuted where there was no indication of an ongoing criminal activity would make for an unlikely scenario for the FBI to drop

236

everything and take that on as a priority to get it indicted. Wouldn't that be fair to say?
A Well, I think to talk about indicting it would be way premature. As I discussed before, because the sensitivity of the people involved and the fact that the referral did not allege --
Q We're just talking in general now. I'm not talking about Mr. McDougal in particular. I'm just talking generally. A check-kiting case involving a previously prosecuted and acquitted, I'll add that, individual, where there is no indication of an ongoing scheme or an ongoing offense would not be the kind of case where the FBI would push it to the top of the list in terms of investigation with a view toward indictment. Would that be fair to say?
A Well, I'm a little bit troubled by the indictment because we don't know if it's going to reach the indictment stage. Cases that are priority in the FBI that we pull out all stops would be kidnaping, or if somebody threatens an FBI agent, the presses stop.
Q In terms of bumping to priority status, one

237

would consider such items as whether, for example, you had clear jurisdiction as the investigating agency. Do you feel that in 1992, you had clear jurisdiction to investigate check-kiting?

A In 1992, I believe we did. In a federally insured institution, I think we had jurisdiction for a number of years before that.

Q If there was what other element?

A Well, there would need to be a loss to the bank, which was one of the things I cited in my analysis that wasn't clear from the referral.

Q But even if the referral had indicated that there was a loss and you were dealing with a person who had been acquitted, what other things would there be to ratchet this up or down in terms of priorities of allocating your limited resources to? And I'll give you some possibilities and you could respond as to whether this would increase or decrease the interest in prioritizing the investigation, if you would do that; okay?

A I'll try to do that.

Q One ongoing offense?

238

A We're talking about a situation where we don't have high profile individuals involved, just generally, an ongoing offense?

Q Generally, right.

A Well, an ongoing offense --

Q Would that make it more or less likely that you would give it priority?

A My experience is it's more likely that we address something that's ongoing at the time we receive the complaint.

Q An individual who might be in a position to hide the fruits of the crime, would that make it more or less likely to prioritize?

A Well, I think there's a presumption on my part that everybody has the capability of hiding some of what they're doing.

Q Okay. Evidence of intention to flee the jurisdiction?

A That would result in a quicker evaluation of whether or not there were facts sufficient to obtain, for instance, an arrest warrant to stop them from fleeing.

239

Q Higher priority, in other words?
A Yes.
Q If there was a larger as opposed to a smaller or indefinite loss associated with the suspected criminal activity?
A Well, generally speaking, that could be one factor, but it could also be a factor whether or not there was anything to do. You could have -- I could assign two cases to an agent, one with a large loss, one with a small loss. After examining the underlying facts, there would be -- there could be immediate action needed to work the case on the small loss, and after examining the facts on a large loss, you may determine that no action is necessary or needed for a month or two, so --
Q But in terms of prioritizing in the interest of the FBI and allocating resources, would a larger loss be more likely to result in a more prioritized effort?
A Well, it's as much aggravation to work a little case as a big case, sometimes more. We have alpha designators that go along with numeric numbers

240

that represent case categories in the FBI. And the way those work is the higher the amount of loss, the alpha designator indicates it's a higher amount of loss. And within the FBI for recordkeeping purposes, the higher the amount of loss, that qualifies it as a priority case.
Q Staleness of the alleged action versus nearness in time to the point at which you learn about it?
A It would depend on the specifics of the situation. In my experience, the staleness can make it more difficult because of records being missing, witnesses' recollection not being good and oftentimes the prosecutor's office does not like a stale case.
Q But if you dealt with a stale case of indeterminate loss involving an individual who had been prosecuted, had health problems, had no visible means of making restitution, would there be an FBI term to describe such a case?
A I don't know if there's a term in the manual.
(Laughter.)

241

Q Is there a term in the field?
A Well, agents are creative in their terminology to describe cases. This case -- the case you described describes this referral and I've already told you what the analysis was.
Q But for the inclusion of prominent individuals as witnesses, would this -- wouldn't this case be --
MR. GICALE: He's answered this question. I mean, he's indicated that he's drawn a conclusion on the case. You've gone through a long list of all these things, and I believe he's answered the question.
BY MR. BEN-VENISTE:
Q Thank you.
But for the inclusion of prominent individuals as witnesses, possible witnesses, wouldn't this case qualify as a dog? If you don't know, say so.
A The inclusion of the Clintons is what made this referral sensitive and important.
Q That's not the question I'm talking about,

242

the offense.
MR. GICALE: I believe he's answered the question, and I would object to any further questions along that line.
MR. BEN-VENISTE: I hear you.
THE WITNESS: This case, because of the previous prosecution, was not as attractive as if it had not been prosecuted before, and I had expressed that to the RTC before we received the referral, because in prioritizing the cases that I wanted them to examine, I had tried to exclude cases where we already had prosecutions.
BY MR. BEN-VENISTE:
Q I forgot to add in the factors the physical and/or mental health of the principal subject of the investigation. Would that make it more or less attractive if it was an individual who, as I think you indicated earlier, was known to have some medical problems?
A Well, the risk that a lengthy investigation would be conducted and results in a trial that the subject might not be able to attend was certainly a

243

factor that would have to be considered, especially when the person had been prosecuted before.
Q It would make it less attractive?
A Less attractive.
Q Now, the U.S. Attorney, Mr. Banks, was not unwilling to state in a forthright manner his views on whether this case should be pursued in any overt way prior to the election; is that correct?
A Yes.
Q And you have reviewed the letter that Mr. Banks sent to Mr. Pettus. I take it you had worked with Mr. Banks prior to this Madison criminal referral?
A Yes.
Q Did you disagree with any of the reasoning that Mr. Banks utilized in his letter to Mr. Pettus?
A Let me examine that letter.
(Witness reviewed the document.)
Mr. Banks says in the first paragraph of his letter that his evaluation of the referral indicates "there is not a prosecutable case capable of being proved beyond a reasonable doubt against any

244

of the witnesses" and I would agree that based on the information in the referral, that that is an accurate statement.
He says in the next sentence that "participation of some or all of the witnesses," and he doesn't name them, "certainly suggests poor judgment, possible conflicts of interest or ethical infractions proving specific intent or knowing criminal conduct would be a burden, prosecutorial burden that could not be carried beyond a reasonable doubt."
I am not certain as I sit here what he means by "witnesses," although I believe he means the Clintons, and I am not -- I don't know that I would join with him, saying that the -- that I feel like the information in the referral itself suggests poor judgment or an ethical infraction, because I don't have enough information from that referral to know what those witnesses did.
Q And other than that?
A Well, this is a very strongly worded letter, and I would not have worded it this strongly,

245

probably in all cases. And when he says "the only allegations having any credibility worthy of possible deliberation for investigation existing is Mr. and Mrs. McDougal and Lisa Anspaugh," I would say that there were -- without looking at the referral, there could have been other allegations that had credibility.

But I think what this sentence -- from his discussion with me, I'm aware that this sentence indicates that of the allegations in the referral that would have been worthy of credibility and consideration for investigation, those would be the most worthy. And the reason being Mr. and Mrs. McDougal were the higher-ups in the bank, the principals and other activity that may have occurred would have been possibly at their direction.

In the case of Lisa Anspaugh, I think she was a relatively low-level secretary and because of her involvement in potentially signing some of these checks, she would have to be part of the investigation, but I don't know that I would have considered a secretary or a clerk with the same

246

level -- as having the same level of culpability as an owner of an institution.

Other than that, I agree with his decision not to conduct any investigation prior to November 3. I agree that directions from our headquarters don't apply to his office since he's not in the FBI. I'm not sure that I like his wording of "the insistence for urgency appears to suggest an intentional or unintentional attempt to intervene in the political process of the upcoming presidential election."

Q In what way don't you agree with that?

A I believe that the timing of the referral when coupled with the contacts with RTC generated a heightened sense of concern over the RTC's sensitivity to the need to keep this closely held. I'm not sure that I would -- not knowing what RTC was thinking, I'm not sure that I could say that this was an intentional attempt to intervene.

I think it was intentional that we received the referral when we did, and I think that for them not to realize what the ramifications were of the

247

timing of the receipt would have been not very understanding on their part.

Q Well, it would then be at least an unintentional, as Mr. Banks said, interference?

A I think the result of hasty action could well have been an interference with the political process.

Q Now, before you said that out of fairness to the Clintons, you felt that it was an appropriate policy, as Mr. Banks said, not to go off half-cocked or not to do anything precipitous that might cause publicity. Well, wouldn't that also have been fair to President Bush in his campaign?

A Certainly. The --

Q There was no indication that President Bush was cognizant of what was going on and whether somebody, thinking that they would help President Bush by pushing an investigation like this and getting some publicity, tarring the Clintons, might well explode and cause damage to the Bush campaign? Would that be the case?

A That's also --

248

MR. BITTMAN: You're asking him to speculate.

MR. GICALE: I'm going to object to that.

THE WITNESS: Well, I've said before that after November 3 when talking about the referral, Chuck Banks indicated a belief that action by his office might damage the reputation of the United States Attorney's office and might appear political, and certainly in this case or any other case, the reason the FBI takes the position that you not take this type of action before an election is not only to protect those people, but it's a double-edged sword. You could not only harm the reputation of the person about whom allegations are made, but it could also appear that the FBI was being used.

BY MR. BEN-VENISTE:

Q And it was clear that Mr. Banks was in the mode where he did not want to be the vehicle by which someone else's attempt, whether knowing or unknowing, to cause damage to Candidate Clinton would be accomplished. Isn't that so?

A Chuck Banks did not want to interfere with

249

the election.
Q And in your dealings with Mr. Banks, did you know him to be an individual of considerable integrity?
A In my dealings with him, he was.
Q You had no reason to suspect, did you, that Mr. Banks had some hidden agenda?
A I wasn't aware of any hidden agenda.
Q You indicated that you had received information from Special Agent Aaron that he had picked up along with another agent from an Assistant U.S. Attorney who advised that the criminal referral had come over. Was that Assistant U.S. Attorney Roddey?
A I don't know which attorney it was for certain. I doubt it would have been Roddey.
Q Did you know that Ms. Lewis was referring to Assistant U.S. Attorney Roddey as a confidential source of hers in connection with communications she was making within the RTC?
A No.
Q Who did you believe the individual was who

250

was providing the information about the referral to Special Agents Gearan and Wolfe?
MR. GICALE: I would object if this is speculation once again, unless he knows.
THE WITNESS: If I could remember, I would have said the same.
BY MR. BEN-VENISTE:
Q You indicated that as of 1992, September, there were tremendous other strains on your investigative resources. What were those?
A You'll have to refresh my recollection on where I indicated that.
Q In terms of it takes as much as a year to form a prosecutive opinion with respect to a referral such as 0004.
A That's not a strain on our resources. That's just my estimate of a --
Q That wasn't my intention to ask the question that way, and I don't believe I did. You asked me for the context in which you made this statement, and the statement that I had written down in my notes is that there were tremendous other

251

strains on your investigative resources at that time.
A I don't remember saying "tremendous strains" today.
Q Okay. So that your resources were not strained at the time in the Little Rock office to deal with the caseload that you had?
A Well, I can't remember what the caseload was during that time period. I had a number of agents assigned to me on the squad, and I believe what I've testified to is that due to a lack of bank fraud cases, we were not utilizing as many agents to work on bank fraud cases as has had been specifically designated by Congress, so we were using those agents in other areas as opposed to having them sit idle, but resources were available to work 0004 referral or any other referral that we received.
Q Now, in November of 19 -- strike that.
In January of 1993, Ms. Lewis contacted you again with respect to some FOIA request?
A I remember that contact. I'll accept January if you're looking at a document. I don't --

252

Q I'm looking at a summary, so let me see if I can find the document. January 6, 1993.
A Yes.
Q Now, did you have a question in your mind as to whether Ms. Lewis was contacting you solely to get some guidance about the FOIA or whether she might have had something else in mind?
A Yes, I had a question.
Q And what was that?
A That the reason for her question was to determine whether or not we had an open investigation on Madison.
Q And why did you have that view? What led you to that conclusion?
A Well, I didn't conclude that that's why she did it.
Q What did you suspect?
A I considered that as a possibility, because she had expressed interest before in whether an investigation was opened, and I just had to consider the possibility that that was part of the reason or a reason why she was calling.

253

It could have also been that if we did have one open, that she wanted me to be aware that there was media interest in the investigation.

Q Had you ever gotten a call from an RTC or banking regulator before asking your guidance as to whether they ought to release financial documents related to an FOIA request?

A No.

Q Don't they have some pretty regular guidelines over there at the RTC as to when they will release to third parties the investigative material which they have collected?

A I don't know what their guidelines are, but I believe that all government agencies have guidelines.

Q And did you have a sense that this inquiry was at least in part pretextural in the sense that Ms. Lewis would like to be able to report to others as to whether you had an ongoing investigation open?

MR. BITTMAN: That's really stretching the speculation.

MR. GICALE: I would object to that. If

254

he's got some firsthand knowledge --

MR. BEN-VENISTE: You can answer the question.

Lou, you're going to take us all night if you do this.

MR. GICALE: You keep asking questions, asking him to speculate.

MR. BEN-VENISTE: I'm allowed to do that. This is a deposition. If it's not admissible, then it won't be.

MR. GICALE: I understand that, but he can speculate on when the moon will come up tomorrow. I mean that's not relevant.

MR. BEN-VENISTE: You can do that when it's your turn.

MR. GICALE: It's a question as to relevance.

THE WITNESS: I considered that as a possibility. I didn't make a decision that that was the reason.

BY MR. BEN-VENISTE:

Q Did you learn at some point that Ms. Lewis

255

had moved documents to her home relating to RTC investigation of Madison?

MR. BITTMAN: Prior to January of '94, your knowledge prior to January of '94.

THE WITNESS: No.

BY MR. BEN-VENISTE:

Q The question is prior to January of '94 -- let me rephrase it.

Did you have any information that Ms. Lewis, prior to January of 1994, removed documents to her home?

A I don't recall having that information.

Q Did you have information that Ms. Lewis provided those documents to her personal attorney prior to January of 1994?

A I don't recall anything like that. Hold on. January of 1994. If there -- the only way I think that I would have known that, since I don't recall a conversation with Jean Lewis or anybody else, is if there's been a newspaper article, I may have read an article and not remember now that I read the article or when I read it.

256

Q But in any official capacity, did you learn of it either from Ms. Lewis telling you or someone else through the FBI or U.S. Attorney's office becoming aware of that?

A No, not prior to January of '94.

Q Did you have any question about whether Ms. Lewis was speaking to the press or third parties about matters relating to her investigation of Madison?

MR. GICALE: When are we talking about?

MR. BEN-VENISTE: Prior to January of '94.

THE WITNESS: Did you say information or suspicion

(The reporter read the record as requested.)

MR. GICALE: I guess I object to the form of the question.

MR. BITTMAN: If you don't understand the question, say that. If you're crystal-clear on what the question calls for, answer it.

THE WITNESS: Did I --

BY MR. BEN-VENISTE:

Q Let me reframe it if you're having a

257

problem.
Did you have any reason to suspect that Ms. Lewis may have been talking to the media about Madison?
A I didn't have reason to suspect that -- well, Jean Lewis told me in the fall of '93 that a reporter had come to her house and engaged her in a conversation about Madison. She advised me that she provided no information to the reporter. At about that same time, I believe there were newspaper articles or public disclosures -- this is fall of '93 -- about RTC conducting an investigation or referrals. I felt at the time that the most likely source of that information was RTC. I did not conclude that it was Jean Lewis, but since I had dealt with Jean Lewis and she was knowledgeable of this, she would have been among those that had the capability or the knowledge to do that. There was -- this is prior to January of 1994.
The other question that arose is that Michael Johnson advised me that he had heard that Jean Lewis had spoken to someone at Department of

258

Justice regarding the declination of 0004 and I believe that person confirmed it and then about 30 minutes after that telephone conversation, a reporter called that person at DOJ to ask them about a declination of a referral. That wasn't -- Michael Johnson offered that as potentially being an indication that Jean Lewis had spoken to somebody.
Q Now, in response to my earlier questions, you indicated, I believe, that in November of 1993 something occurred with respect to Jean Lewis that you felt gave you some concern.
A I don't know if I said November. I think I was talking about her advising me that a reporter had come to her house, and that concerned me because I have been cautioned throughout my career that when you think that you're only listening to a reporter, that you're oftentimes providing information, even though it's not intentional.
Q Was there anything else -- and let me show you your memo of November 1, 1993. You took the trouble to write a three-page memo essentially about your contact with Ms. Lewis at that time. Let me ask

259

you to review it.
MR. GICALE: What's the date of this again?
MR. BEN-VENISTE: November 1. Would you mind reading the FBI designation?
THE WITNESS: FBI 1007 through 1009.
(Witness reviewed the document.)
Okay, I've reviewed this memo.
BY MR. BEN-VENISTE:
Q Was there anything in that memo at that time that concerned you? Did you already have some concern about --
A I had concern that Jean Lewis talked too much in general about this referral and that that included in RTC, and that as I said before, I was not sure that this was being treated with the same degree of care within the RTC that was being applied to it by the FBI.
Q Did Ms. Lewis give you some reason for concern when she had indicated earlier in the year that she thought that an Arkansas Times article relating to Governor Tucker must have generated

260

action by the FBI?
A Well, my concern was that she continued to ask what the status of the referral was when I had indicated to her that I did not want to discuss it.
Q Let me show you FBI 1537.
MR. GICALE: 1537? What's the date of that?
BY MR. BEN-VENISTE:
Q That's July.
A July 23 of '93.
Q That's with respect to the question about the Arkansas Times reference.
A Well, I'm not sure that I understand what you mean by "concern." Concern about what?
Q Concern about Ms. Lewis and the way she looked at things and the way the media might play into these investigations.
A I don't remember if that was my concern at the time. I don't recall exactly what the concern would be, if any, at the time, other than I think it's unrealistic for her to believe that we would take action based on solely a newspaper article when

261

we had a referral with the underlying facts and we made a decision based on the underlying referral. The fact that the newspaper article appeared was not going to make us --

Q Didn't that make you -- go ahead and finish. Sorry.

A The fact that a newspaper article appeared absent some specific information that greatly changed that previous referral, the fact that there was media interest did not mean that we were going to take an interest.

Q Didn't that make you think in view of the fact that Ms. Lewis was saying that she thought that the Arkansas Times article made the FBI take action that it might not otherwise give you some concern about the possible use of the media to get you to do something else?

A I don't know what my concern was then. I wrote down what she said. I'm always concerned about disclosures. That's the way -- that's the reason this was treated the way it was before the election and continuing after the election.

262

Q She was talking to you again in this conversation back in July about FOIA and trying to see, according to your memorandum, whether you would confirm to her that there was some investigation ongoing involving Governor Tucker; is that right?

A Yes.

Q And she again used this FOIA rationale to attempt to elicit from you whether or not the FBI was, in fact, investigating Governor Tucker?

A Well, this was the second time she had referenced FOI, and it was possible both times that that was a vehicle to find out whether or not we were conducting an investigation.

Q And despite the fact that you wouldn't tell her that you needed her and the RTC to withhold documents from some third party requesting them, in this case the Arkansas Democrat, she nevertheless told you that she intended to hold out or withhold the incriminating documents, as she put it, and you wrote it in quotes, that she had found in her investigation?

A That's right.

263

Q So no matter what you said, she wasn't going to give those documents up anyway?
A That's my understanding from what she told me.
Q Didn't that indicate to you the whole thing was pretext? She wasn't going to give them to the Arkansas Times whether you said you were investigating Tucker or whether you said you weren't investigating Tucker?
A Well, it indicated to me -- and I believe that's why it's in quotes -- that there was a universe of documents, some of which she considered incriminating, and that the ones she did not consider incriminating might be released under FOI.
Q Do you have any information to suggest that they released any financial records relating to Governor Tucker that they had accumulated in their official capacity at the RTC?
A I have no idea what they released, if anything.
Q On this issue of the press and Ms. Lewis, is it correct that in or about August or September,

264

rather, of 1992, the Department of Justice had made an inquiry of FBI headquarters, which in turn made an inquiry of FBI Little Rock, relating to a press inquiry they had received regarding an FIF investigation in which the Clintons might have been involved?
MR. GICALE: Which document number are you referring to?
MR. BEN-VENISTE: The record will show that I've shown a document to Agent Irons to help with his recollection, which is --
THE WITNESS: This is not my chronology, and I don't believe I was aware of this, because as we've discussed earlier, we did not communicate with headquarters about anything concerning this referral or the Clintons prior to Kevin Kendrick calling me on October 6, so this is not my chronology and I was not aware of this.
MR. BITTMAN: It's FBI 1021.
THE WITNESS: Okay. This says that Little Rock FBI was contacted by headquarters and advised no investigation involving the Clintons as subjects was

265

pending. I received a contact --
BY MR. BEN-VENISTE:
Q I don't think that says "subjects," does it?
A It does.
Q Subjects?
A Yeah.
Q The inquiry is phrased somewhat differently, wasn't it?
A Okay. "The DOJ receives press inquiry concerning existence of an FIF investigation in which the Clintons may be involved. DOJ makes inquiry of FBI HQ regarding existence of such a matter. Little Rock FBI was contacted by FBI HQ and advised no investigation involving the Clintons as subjects was pending."
The only -- I received one contact from a headquarters employee prior to 10-6 of '92 where a question about the Clintons' involvement in criminal activity was posed to me, and this may be identical to what this last sentence of this refers to, but I was not aware of the information prior to that that

266

you had highlighted.
Q So whoever fielded that inquiry didn't specifically mention it to you at Little Rock headquarters?
A The conversation I had, the person did not tell me that I recall that DOJ had received a press inquiry. In fact, I don't think that bank fraud or FIF was part of that conversation. If it had been, my answer would have been different.
Q Did anyone else in the office, in your office, discuss with you whether they thought that Ms. Lewis might have revealed information outside of official government channels relating to her investigation?
MR. GICALE: Which time period?
MR. BEN-VENISTE: Prior to January 1, '94.
THE WITNESS: Well, when the media disclosures occurred or when the media printed articles about RTC investigations and referrals in the fall of '93, there was discussion among the FBI personnel who were involved in this that it was possible Jean Lewis could be involved in that.

267

There's another conversation that I had with someone. I'm not sure whether or not it's --

Q Could we get the first one a little more detailed?

A Sure.

Q Who mentioned that to you?

A I don't specifically recall the conversation, but the people I was dealing with were Dave Reign and the Financial Analyst Hall and the ASAC Whitehead, and possibly the SAC Satkowski.

Q And what was the nature of the publicity?

A There was publicity that disclosed that the RTC had, I believe, generated referrals on Madison Guaranty, and we wondered where the disclosure could have come from. And at the top of the list of our suspects would be RTC.

Q And the second you were about to give us?

A That was a contact, and I'm not sure whether or not that goes past January of '94 or not. I'm not sure of the time frame, so I don't know whether or not I should respond.

Q It doesn't go you into your investigative

268

work, does it? This is something you've heard about a media leak?

MR. GICALE: If it's beyond January '94.

MR. BEN-VENISTE: I know you wouldn't want him to say, Lou, because it might reveal something --

MR. GICALE: That's not it at all, but if you want to get into all the other things that happened in '94 and '95 and the indictments and stuff, that's not what the agreement was.

MR. BEN-VENISTE: We're talking about news leaks here, Lou.

MR. GICALE: We're talking about an agreement with respect to questioning of a witness.

MR. BITTMAN: He's not sure when that information was, and it could -- based on what it is, it could well have been after the January time frame.

THE WITNESS: I'm leaning toward thinking it was past January '94.

BY MR. BEN-VENISTE:

Q My question is associated with Ms. Lewis making -- a discussion of Ms. Lewis leaking any

information.
MR. GICALE: I'm sorry, what was that again? I couldn't hear.
BY MR. BEN-VENISTE:
Q You think it might have been past January of '94, the thing you're thinking of, second thing?
A Yes, yes.
Q Is it fair to say that as of November of 1993, Agent Irons, you had a concern that Ms. Lewis might be providing information to the media?
A Yes. I was concerned about possible disclosures to the media from the outset of this.
Q And now I'm specifically asking you, so that -- out of fairness to Ms. Lewis, if it is the case that as of November of 1993, specifically you had a concern about whether Ms. Lewis was leaking information to the media.
A If you could remind me of the date of this memo where I talk about her talking about the reporter visiting her house.
Q 11-1-93.
A That was the time frame that I was

concerned that Jean Lewis might possibly have been leaking information to the media. I didn't have factual information, but I believe that disclosure had occurred, and she certainly had access to the information.
Q Well, let me see if I can refresh your recollection to how you were looking at this at the time by reading from page 2 of your memorandum, which is FBI 1008. "Inasmuch as writer," meaning you, "was somewhat stunned, Lewis was admitting to meeting with a reporter, and because of his continuing concern Lewis was trying to obtain a statement of some kind to provide to the media, her disclosure was received without comment and the conversation was ended."
A I think that's consistent with what I said, that I was concerned at that time that she might be talking to the media.
Q Well, here, it goes a little further in terms of what you're saying. I don't mean to argue with you, but maybe you could explain what you meant, that you had a continuing concern that Lewis was trying to obtain a statement of some kind to provide

271

to the media. Let me ask you whether that references the pretextural request with respect to the FOIA inquiry.

A The concern I had that Lewis was making disclosures to the media was heightened during November of 1993 because I was aware the media had printed stories about RTC referrals and I believe that there definitely had been a disclosure made.

Looking back on my concerns over her previous contacts and my suspicions that those contacts could be to obtain information, I viewed it as a possibility that she had been trying to obtain a statement since that time.

Q Okay. Thank you. Did there come a time where you felt that you needed to have someone else on the phone when Ms. Lewis would call you as a witness to the conversation?

A Yes.

Q When was that?

A I prepared memos that would reflect when that time was. I think it may be the memo you just showed me.

272

Q Did you feel that as of that time, Ms. Lewis might be taping your conversations?

A I don't recall if I was concerned about being taped back then. It -- it would not have made a difference in what I said, even though if I had suspected she was taping me, I would have refused to talk to her altogether.

Q Did you have reason to believe from any source prior to January 1 of 1994 that Ms. Lewis was taping conversations surreptitiously?

A No. Unless -- there has been a public disclosure of a tape she has of another RTC employee. Whenever that was publicly disclosed I was aware of that, and that was the first time that I was aware that she might have been taping anybody.

Q You are correct in the sense that your memo of November 1 reflects that you had asked Special Agent Reign to assist in that telephone conversation with Ms. Lewis.

A Correct.

Q Was that the first occasion that you had made such a request of another agent?

273

A I don't know if that was the first, but I think there were -- there was at least one other occasion.
Q What do you recall about that occasion?
A I don't --
MR. BITTMAN: Can you disclose it? It doesn't have anything to do with this case, but as long as you don't disclose any confidential FBI information.
MR. BEN-VENISTE: I assume we're talking about a conversation with Ms. Lewis roughly about the same subject.
MR. BITTMAN: Oh, okay, excuse me.
THE WITNESS: Right. During that time frame, I believe that news articles had appeared, and this is subsequent to David Hale going public and making allegations, so there was a very strong media interest in allegations and information concerning this, and then information appeared that referenced RTC activities.
Based on that, I was concerned that if I gave information or provided any type of information

274

to Jean Lewis, even though I would normally not provide it to someone who didn't need to know, that -- or even if I did not provide it, that if she were speaking to the media, that she could attribute comments to me, and by having a witness in the room when I spoke with her, if called to account on this, I would have somebody that could verify what I had said to her.
MR. BEN-VENISTE: Why don't we take a short break.
(Recess.)
BY MR. BEN-VENISTE:
Q In November of 1993 shortly after the conversations that you just alluded to with Ms. Lewis, did there come a time where you sat down with representatives of your office and the U.S. Attorney's office to discuss going forward with investigations relating to bank fraud; not Madison in general, but bank fraud in general?
A I don't recall specifically a meeting like that. This is not related to Madison?
Q This was, in fact, not related to Madison?

275

MR. GICALE: I guess I have to object to the relevance. I realize that there's an exception here to this agreement with Independent Counsel that says communications between Irons and U.S. Attorney's office for the Eastern District of Arkansas, but I thought that this is under the umbrella of things related to Madison and related matters.

MR. BEN-VENISTE: It has to do with the question of priorities following through the issues that we've discussed about the FBI's attempt to get the RTC to investigate the matters that we have talked about here.

BY MR. BEN-VENISTE:

Q What I'm asking you about is a meeting which involved Mr. Johnson and others where you discussed the effects of the RTC choosing to focus on Madison as compared to other institutions of substantially larger size in Arkansas that had failed for which you had never gotten referrals as of November of '93.

A I don't recall a specific meeting, but it's certainly possible and logical that a meeting like

276

that would have occurred.

Q And do you recall stating in substance that for years and years, you had been attempting to address the S&L failure issue in Arkansas and that the RTC was viewed by you as a barrier rather than as a resource in attempting to address that serious law enforcement issue?

A Well, in '93, since I've been supervisor since '92, I could have -- I may have said years. I don't know if I would have said years and years. The barrier, because of what I previously set forth, in that the FBI couldn't open a bank fraud case without a referral from a regulatory agency, and because the RTC had effective control over all the failed institutions and we were relying on them for referrals, and because the number of personnel that RTC had assigned to generate referrals for the FBI was small, in that sense they were a barrier.

Q Was there also a problem that the RTC insisted on keeping documents and records until they completed the referrals in not sharing them with you?

A There was a problem -- I had a problem

277

specifically in the Hale investigation, the investigation that was occurring in the summer of 1993.

MR. BITTMAN: We're not talking about that. Can't talk about that. Well, I guess you can talk about it generally, generally.

THE WITNESS: Well, generally --

MR. BITTMAN: I don't want you talking about the records.

THE WITNESS: Since the FBI couldn't open cases without the referral, we didn't have a reason to ask for access to RTC records unless there had been a referral, unless we had another investigation that created a need for some records they had.

So I'm not sure exactly what that means.

BY MR. BEN-VENISTE:

Q Well, did you discuss some strategies and techniques to gain access to the information by attempting to bypass the RTC for the necessary green light?

A Yes, I remember a conversation like that, and I believe that the upshot of that conversation

278

was that we would contact the FDIC or OTS, whoever had been the agency that shut the institution down, and ask for their final exam reports, or possibly the U.S. Attorney would ask for them. And if the U.S. Attorney asked for those and the U.S. Attorney requested that we conduct an investigation, then as I understood it, that would be a basis for us to get into a bank fraud investigation, so that was a way to try to self-generate bank fraud cases.

Q So let me ask you, with respect to this business of getting hold of documents, which I must say is new to me, that if the RTC -- we're back in the '92 and '93 time frame -- the RTC collects documents and information, and you have asked the RTC to get you some referrals worked up with respect to particular institutions, okay now, they collect documents and somebody maybe even gives them documents over the transom, here are some important documents you ought to look at because they show fraud.

You're saying that unless the RTC gives those documents to you in some kind of a formal

279

referral, you have no way of obtaining them by request from the RTC?

A Well, the only way that we would request documents would be in relation to an investigation, because we were not authorized to ask for access in order to try to generate an investigation with RTC, so that the times that we would ask for the records in RTC control would be if we had an investigation already going and it came to our attention they had documents that would assist us, or if they gave us a referral.

Q Suppose they just said hey, here is a guy who has come to us and he says he's dealt with Mr. X and Mr. Y of institution number 1, that's the most interesting institution to you because they have had a big loss, and these fellas are prepared to give us inside information relating to how they pulled the fraud off, and they have even got incriminating documents.

Are you saying that you couldn't investigate that kind of an allegation unless RTC had sent you a referral along with that information?

280

A Well, I would have to know about the information first. RTC would have to tell us about the information first, and if the person who provided the information to them was willing to meet with the FBI and provide the same information, obviously we could go forward.

Q So only if -- if they call it to your attention, could you then get around this sort of speed bump of getting the RTC to give you a formal referral where you could contact the individual providing the information on your own hope; is that what you're saying?

A Yeah. If RTC is aware of information and has not yet generated a referral and that information would be information that would reasonably be expected to cause the FBI to conduct an investigation, the FBI can't conduct the investigation unless it's aware the information exists.

Q And assuming as you did that the RTC was stretched for resources and couldn't get all the referrals out that you wanted them to get out because

281

they didn't have the time to work them all up, is there any reason why you would expect that the RTC would not provide you the sort of tailor-made case with an informant or cooperating individual who would be prepared to talk to you?

A The only reason I can think of offhand is that I'm aware that the RTC's first priority is civil recovery of money, and as a matter of fact, usually only after efforts to recover money through civil action are exhausted will they let the criminal investigators examine it and let them refer that to the FBI.

Sometimes even after the FBI starts its investigation, the civil side of RTC does not want to lose out on its chance to file some type of civil suit. If there was a desire for them to pursue civilly, I could understand as an organization they might not notify the FBI right away.

Q So that -- let's assume that the person getting the information was a criminal investigator. Would that affect this equation at all? Would you then expect an RTC criminal investigator to talk to

282

FBI about information that they had received from a cooperating source of this nature?

A That would be a course of action that would please me.

Q Well, we're up from not being displeased to being pleased. I guess we've made some progress over the last few hours.

(Laughter.)

Your dinner was probably better than mine.

A The FBI would be happy to receive information of that type.

MR. BITTMAN: I think we better stop now.

BY MR. BEN-VENISTE:

Q Let me go to the question of the David Hale plea negotiations. When did you first learn that there were negotiations of some kind going on, or discussions, let's say?

A It was shortly after the search warrant on July 21 of 1993, I would say within the next month.

Q Okay. Now, prior to the search warrant, had Mr. Hale been advised that he was under investigation?

283

A Not to my knowledge.
Q And after this -- did you participate in the execution of the search warrant?
A Yes.
Q And that was coordinated with an Assistant U.S. Attorney who had assisted in obtaining the warrant?
A Yes.
Q And was that Fletcher Jackson?
A Yes.
Q And Fletcher Jackson was a career prosecutor in that office, wasn't he?
A Yes.
Q So who worked with Mr. Jackson to work out the strategy of getting the search warrant and so forth?
MR. BITTMAN: We're not going to get into that. I'll let you go a little bit, but unless this relates to the plea negotiations --
BY MR. BEN-VENISTE:
Q I asked you who worked with him.
A I did.

284

Q Anyone else?
A Primarily me, with some assistance from Financial Analyst Hall.
Q So you all worked out your strategy and executed it with the obtaining and execution of a search warrant up to that point?
A Yes.
Q Sometime subsequent to the execution of the search warrant, you learned that there was some discussion about a plea agreement?
A Yes.
Q And do you know on the basis of what you learned, was that a discussion initiated by Mr. Fletcher or someone representing Mr. Hale?
MR. SGRO: You mean Mr. Jackson; right? You said Mr. Fletcher. Mr. Jackson?
BY MR. BEN-VENISTE:
Q Mr. Jackson or someone representing Mr. Hale.
A My impression was from conversations with Mr. Jackson that it was Mr. Coleman that brought up the possibility, but I'm aware that exchanges like

285

that between prosecutors and defendants, that it's a subject that naturally would come up.
Q Had you been acquainted with Mr. Hale prior to your involvement with the search warrant?
A Yes.
Q And had you been involved with Mr. Coleman in any way?
A Not directly.
Q Was he at that time in your view an experienced criminal law practitioner?
A Coleman?
Q Yes.
A I don't know that I knew enough about Randy Coleman to make a judgment like that. I became aware at the time of this case that he had represented someone in another case, but at the time of that earlier case, he was not significant to me and I did not remember him from that case, so this really was the first time I learned anything about Randy Coleman.
Q Did anyone in the office provide you with any sort of background on him as to other cases he

286

had handled and whether -- the kind of things that one would talk about in dealing with an attorney?
A I don't recall if anybody in the office talked about it or when exactly it was discussed, but at some point Coleman was characterized to me as someone who worked out plea agreements more often than he went to trial.
Q And was he known as more of a state or federal practitioner?
A I couldn't answer that.
Q What was the first you learned about the discussions, what was on the table?
A I believe that Fletcher Jackson notified me that he had had discussions with Randy Coleman and that Randy Coleman wanted immunity for Hale in exchange for cooperation and may have also discussed a misdemeanor plea, and Jackson, I believe, also discussed that a misdemeanor plea might be possible.
Q Now, at this point, what month are we in roughly? Search warrant is in July?
A It's July 21, so this would have been I think the last few days of July or the first -- early

part of August. It could have been later because the negotiations could have been prompted by -- I think the overtures by Coleman were prompted by him learning that we intended to indict David Hale very quickly, and we originally intended --

Q Was that consistent with your strategy or was this Fletcher Jackson off on his own?

A Indicting him quickly?

Q Yes.

A We had quite a bit of information even prior to the search warrant, and originally intended to seek indictment in August.

Q So then you got the search warrant and you got a bunch more stuff?

A Yes.

Q And so you were trying to process that information and get through it and make sure you didn't miss anything?

A Well, we're always seeking to expand the investigation when we can.

Q Okay. So if I understand what you're saying, clearly you had enough for probable cause for

your search warrant but what you're saying is you were pretty far along in your investigation at the time you executed the search warrant?

A The over --

MR. BITTMAN: Well, let's not get -- I don't want to get too far into the substance. I mean is there --

MR. BEN-VENISTE: I'm not talking about any substance. We're talking about whether there would be a quick indictment or not.

MR. BITTMAN: Okay, I think you can ask that, were you able to follow through with a quick indictment without getting into how far along you were in the investigation and how much evidence you had against the target.

MR. BEN-VENISTE: Well, presumably you wouldn't go for an indictment unless you had the evidence.

MR. BITTMAN: Right. Well, you're asking how much evidence did you have before you executed the warrant.

MR. BEN-VENISTE: Right. Let me rephrase

289

that if that causes you a problem.
BY MR. BEN-VENISTE:
Q You were thinking about an August indictment initially, and then you received a lot of information as a result of the search warrant and you were talking about possibly expanding; correct?
A Correct.
Q Okay. You think that the discussions about a possible plea emanated from the fact that Mr. Coleman was told that his client was facing an indictment within a short period of time?
A I believe so. I think that's why Mr. Coleman, according to Fletcher Jackson, indicated that there should be consideration of some period for Hale to negotiate or work undercover, and that if an indictment occurred very quickly, end of August, that there really hadn't been time to discuss other alternatives to an indictment.
Q Now, at this point Mr. Coleman was talking about either immunity for sure and possibly a misdemeanor, that he'd go as far as a misdemeanor?
A That's what Fletcher Jackson related to me.

290

Q Did you confirm that in any way?
A Did I confirm what, Fletcher Jackson?
Q Yes. I mean, was that confirmed subsequently in your review of documents and conversations with Mr. Coleman? I'm not trying to ask you a trick question.
A No, I'm just trying to remember. I don't know exactly what --
Q Earlier you had indicated that you had a conversation with Mr. Coleman.
A Randy Coleman called me, and I can't remember -- he -- I don't know if he said -- if I let him get that far to say that he wanted immunity or misdemeanor. He started to complain and say that he wasn't sure that the FBI was fully aware of what was going on with the U.S. Attorney's office and I think I cut him off somewhat and told him if his problem was that he wanted immunity or misdemeanor, that the FBI position was that it be a felony.
The reason I may have cut him off was that Fletcher Jackson had told me that that was his problem. But it is possible that he mentioned to me

291

that he wanted immunity or misdemeanor.
Q So the search warrant and the decision to seek a quick indictment of felony counts all occurred before Paula Casey came on board as U.S. Attorney; is that correct?
A Yes, yes.
Q And the initiation of plea discussions occurred prior to the time that Ms. Casey came on?
A Well, I can't recall the exact date that Fletcher Jackson first advised me that there had been an overture from Mr. Coleman, but I would place that as very possibly prior to Paula Casey coming on board as U.S. Attorney.
Q And when you spoke to Mr. Coleman, either he called you or you returned his call --
A He called me.
Q And he said look, I don't know whether you're aware of what's going on, but, and you kind of cut him off to say that you were aware and that you supported Mr. Jackson's position?
A Yes.
Q You told him that --

292

A I told him what our position was, and that he would have to have his discussions about that with the U.S. Attorney's office because that wasn't the FBI's role.
Q The central point of your position was number one, was that Mr. Hale was going to have to plead to a felony on the basis of the information that you had developed?
A That's right.
Q That talking about immunity or a misdemeanor wasn't in the picture for him?
A That's correct.
Q And it was your view that giving him some ambiguous response would have been unfair to him because you had pretty strong feelings about that?
A Yes.
Q Now, when he told you about this possibility of providing cooperation either in a controlled situation with a phone call or some such other thing, was he specific about what it was that he was willing to do, that is Mr. Coleman talking about his client?

293

A I don't know -- I don't recall all the specifics of that conversation. I don't know if he talked about phone calls or recordings. He may have, but he did not provide specifics of who the persons that would be in contact with David Hale would be or what the alleged crime they would be involved in was.

Q And this was a -- this was a conversation that occurred after there was some general knowledge about the execution of the search warrant, I believe your earlier testimony indicated?

A This occurred prior to the search warrant being referenced in the media, but I was aware from the way the search warrant was conducted that it was reasonable to expect that persons close to David Hale knew a search warrant had been conducted and he was under investigation, and my assumption at the time was that David Hale was most likely able to deal with people involving criminal activity and would be most logically expected to be involved in criminal activity with people he could trust and were close to him, and because I felt like the people close to him were probably aware of the FBI search, that the

294

chances that he could effectively carry out that type of operation were diminished.

Q Talking about trade craft in general and putting aside these specifics, as I know you're sensitive about talking about them -- Mr. Bittman nods his assent -- in a situation where there has been some reason to suspect that individuals associated with the subject have a knowledge of an associate -- of the target being the subject of an investigation, and where that individual agrees to, let's say, provide assistance in a consensual recording, a one-party consensual recording of a telephone conversation, it is possible, as you've indicated earlier, that you would wind up as the investigator with an individual with whom your target is having a conversation essentially making exculpatory statements in the course of the telephone conversation?

A False exculpatory statements was my concern.

Q Right. And under those circumstances, you would be left with a putatively cooperating subject

295

who would expect some consideration for his cooperation, and exculpatory conversation from the secondary target?

A That's correct.

Q Suboptimal from your point of view?

A Yes, failure.

MR. GICALE: It would displease you.

THE WITNESS: Yes, it would displease me greatly.

BY MR. BEN-VENISTE:

Q Moreover, up to that point, Mr. Coleman was not willing to provide a proffer to the U.S. Attorney's office or to the FBI of what information it was that his client had; is that correct?

A That's my understanding.

Q I notice that at some point in the negotiations, Mr. Coleman listed as one of the objects of an agreement -- and I refer to the November 9 memorandum from Ms. Casey to Don Mackay, summarizing the progress of the plea negotiations -- that Mr. Coleman and/or Mr. Hale wanted you specifically to be involved in connection with any

296

further investigation or prosecution by the government.

A I have some recollection of that.

Q So one would expect that Mr. Coleman, who went to the point of specifying that he would like Agent Irons to continue on with the investigation, must have viewed you as at least a fair individual?

A That's one possibility. He could have viewed me as weak and easy to manipulate.

(Laughter.)

I'm serious.

MS. SIMONTON: No, I know.

BY MR. BEN-VENISTE:

Q But let's assume that the Steve Irons who was in Arkansas in November of 1992 was more or less the same Steve Irons we see here today and I would suggest that this was a nonmanipulative or manipulatable Steven Irons, and he chose you because he had confidence that you were fair and reputable individual.

Is there some reason why, that you know of, why Mr. Coleman would have been unwilling a matter of

297

months before that to make a proffer to you because he thought that you wouldn't be fair or discrete in the information that he would provide you?

A Well, I wouldn't have discussed receiving a proffer unless the United States Attorney's office was involved, because a proffer is an agreement and certain assurances are provided to the defense, and I had no authority and was in no position to do that. And it would have been outside the realm of my authority to do that.

Q Right. With the approval of the U.S. Attorney's office, I believe there is correspondence here that reflects that Ms. Casey advised Mr. Coleman that a proffer to the FBI was an alternative. Do you recall that?

A Was an alternative to what?

Q To his making a proffer prior to any plea negotiation.

A Well --

Q Let me see if I can find it for you.

A A proffer is a proffer.

Q Well, I'm making a distinction between a

298

proffer to the U.S. Attorney's office, if Mr. -- putting aside the fact that Fletcher Jackson was a career prosecutor. If Mr. Coleman was really concerned about the fact of making a proffer to the U.S. Attorney's office because of some concern about whether there was some political bias, that a proffer to the FBI, given Mr. Coleman's confidence in you, would seem to have eliminated that problem if it was in fact a real problem. Do you follow me?

A Yeah, I think that if the U.S. Attorney's office had agreed on the conditions of the proffer with Mr. Coleman and the ground rules were clear with the U.S. Attorney's office for Mr. Coleman for the FBI, what you're saying is that the U.S. Attorney's office was willing to let the actual participants in the proffer setting to be Coleman and the FBI.

Q Right.

A And what is it exactly that --

Q Was there any reason that you felt why Mr. Coleman would believe that you would not be in a position to fairly receive and evaluate that proffer back in September or October of 1995?

299

A Well, I don't know what he thought, but if --

MR. GICALE: I guess I would object to the form of that question. How does he know what Coleman thought?

THE WITNESS: You've advised me that he asked for me.

BY MR. BEN-VENISTE:

Q Let's start back. I had assumed that you would have known that he, Mr. Coleman, made a request that you be involved in any further investigation if a plea agreement could be worked out.

A Since you've mentioned that, I became aware of that at some point during the negotiations from the U.S. Attorney's office or possibly Mackay, I don't know.

Q So what I'm asking is whether it makes sense to you that he would have objected a couple of months earlier to making the proffer to you because he questioned your fairness or objectivity.

MR. GICALE: I guess I object to the relevance of whether it makes sense to Coleman.

300

MR. BITTMAN: If you know.

THE WITNESS: Well, I don't know what Mr. Coleman was thinking. I can only say that if he had asked for me --

MR. BITTMAN: Don't speculate. If you don't know what he was thinking, say you don't know what he was thinking.

MR. BEN-VENISTE: I didn't ask that question. I thank Mr. Gicale for mixing us all up and taking additional five minutes, but if you would reread my question

(The reporter read the record as requested.)

THE WITNESS: I was not aware that he had questioned my fairness a couple of months earlier.

BY MR. BEN-VENISTE:

Q I'm not suggesting that he did. What I'm asking you is whether it makes any sense that he would have objected to making the proffer to you if he had some objection to making the proffer to the U.S. Attorney's office.

THE WITNESS: Can you read that?

MR. GICALE: I have to object. What is the

301

relevance of whether it makes sense to him?
THE WITNESS: I'm just trying to follow.
MR. GICALE: I know you are, but I'm objecting to it. I just don't think it's relevant.
MR. BEN-VENISTE: The relevance is probably the worst objection you can make here.
MR. GICALE: Well, it's one under this resolution that is available. Given the struggle that this witness is having to try to answer the question, I just don't see how it's appropriate.
(The reporter read the record as requested.)
THE WITNESS: I'm sorry, I just don't understand the question.
BY MR. BEN-VENISTE:
Q Did you understand that Mr. Coleman was saying that he didn't trust the U.S. Attorney's office?
A Yes.
Q Did you have reason to believe that he didn't trust you?
A No.
Q So putting those two facts together, do you

302

have any reason to believe that if he really wanted to make a proffer, that he would have had an objection to making the proffer to you directly?
A Well, I would not have received the proffer directly.
Q We'll start this circle again. The U.S. Attorney indicated to Mr. Coleman that she was willing to have a proffer made to you, the FBI.
A Okay.
Q Did you understand that?
A I understand that you're telling me that.
Q You didn't know that at the time?
A I'm not sure if I knew that she made that offer. I'm not sure that -- I understand how you've characterized it, but I don't know if she meant -- I can't recall if she meant without representatives of her office being present or not.
Q Mr. Coleman was dug into the position that before he was willing to make any proffer, he wanted a guarantee that his client wouldn't be prosecuted for a felony. Isn't that so?
A Well, it's my understanding that when his

303

position was described to him as being that, that he may not have said that was his position, but it was our belief that was his position.

Q Okay. And you had conversations with Fletcher Jackson about that; correct?

A Yes.

Q Later on when Mr. Mackay came down from Washington and took over responsibility for this investigation, did you understand that Mr. Mackay had conversations about a possible plea agreement?

A Yes.

Q Did you understand that Mr. Mackay, departing from the rules that you and the U.S. Attorney's office had annunciated, stated that he was willing to receive the proffer with an open mind and that he wasn't going to insist on a felony plea, no matter what the proffer was? Did you understand that?

A Yes, I believe I did.

Q And did you understand that Mr. Coleman still would not make a proffer, even under that representation?

304

A Well, I understand that he never did make a proffer.

Q Was there a distinction between never did and wouldn't?

A Well, I can't -- I don't know at what point Mackay -- I can't recall at what point Mackay would have told him that he had his open mind and whether or not there was a period of time where they tried to work out details or availability for a proffer. In other words, what I'm saying is if Mackay had that conversation with Coleman shortly prior to him being -- Don Mackay being replaced, then Don Mackay's replacement may have -- the fact that he was replaced may have taken away the opportunity for the proffer.

But it's my recollection that there was time for Randy Coleman to make a proffer to Don Mackay, and he did not.

Q Okay. And the U.S. Attorney's office, whether it be Mr. Jackson, Mr. Johnson or Mr. Mackay, was taking the position that a plea to a one-count felony would be a minimum requirement, correct?

A That's my understanding. I was not privy

305

to the conversations between U.S. Attorney's office and Randy Coleman.
Q And as it turned out, Mr. Hale pleaded guilty to two felony counts?
A That's correct.
Q Now, you learned at some point that some individual associated or putatively associated with Mr. Hale claimed to be going to Washington to apply some sort of pressure to kill the investigation?
A That's correct.
MR. BITTMAN: Well, was this relative to the plea negotiations?
THE WITNESS: Yeah, this -- well --
MR. BEN-VENISTE: This was testified to some hours ago.
MR. BITTMAN: I know.
THE WITNESS: This was during the time frame of --
MR. BITTMAN: Is it relevant to the plea negotiations between Hale and the U.S. Attorney's office or Mackay?
THE WITNESS: Well, I can see how it would

306

be relevant. The way I think it could be relevant is that --
MR. BITTMAN: Hold on. That's not a question.
BY MR. BEN-VENISTE:
Q Now, who is this individual who was so identified?
A It's my understanding from Fletcher Jackson that his name is Richard Mayes.
Q And who is Richard Mayes?
A An attorney and I believe a former judge of some type from Little Rock.
Q Did this information concern you?
A Yes.
Q Did you take any action to determine whether Mr. Mayes was acting on behalf of Mr. Hale?
A The only action I took was to advise our headquarters, I believe Supervisor Erickson and Supervisor Kendrick, that we had received this information from Fletcher Jackson and asked them to be alert for any similar information that got back to them from Washington.

307

Q And did you learn as to whether Mr. Mayes had in fact made any effort on behalf of Mr. Hale in this regard?
A I believe if I did get an answer to that, that it was after January 9 of '94.
Q Did you write up the information that you had received from Mr. Jackson to transmit it to Washington?
MR. BITTMAN: Prior to January of '94.
THE WITNESS: No, I believe I just telephonically advised the supervisors in Washington and made a memo internally in Little Rock. It was a rumor being repeated by Fletcher Jackson.
BY MR. BEN-VENISTE:
Q It was just a rumor?
A Fletcher was actually somewhat cryptic as to how he found it out. I never knew where he found it out.
MR. BEN-VENISTE: Off the record.
(Discussion off the record.)
BY MR. BEN-VENISTE:
Q When I was in the U.S. Attorney's office

308

when there was some suggestion of improper influence, it is sometimes the case that somebody has applied pressure, often there are attorneys who make a living giving that impression to unwitting clients. It was the case that a quick indictment is a pretty good tonic to cure that kind of an infection.
How long after -- when did this information come to your attention in terms of the ultimate resolution of Mr. Hale's case?
A Ultimate resolution as in his plea?
Q Yes.
A The information that efforts were made to quash the indictment, that information, I believe, came to my attention prior to his indictment, and I believe somewhere there's a memo that I've written that indicates the dates I advised the headquarters supervisor that I had heard that, and I would have heard that very near the date of that memo.
Q So in fact the information was not related to whether Mr. Hale was going to achieve some kind of favorable plea resolution but rather that the indictment itself would be quashed or fixed or

309

somehow interfered with?
A That was the information.
Q So the return of the indictment might well have cut short any further speculation about whether Mr. Hale had such influence directly or indirectly to interfere with the return of a factually supported indictment?
A If he or his representatives had been involved in such efforts, the indictment rendered those efforts moot.
Q Was there any information that you later learned of that would suggest that this individual was off on a lark of his own without any connection to Mr. Hale?
A I don't recall.
Q In connection with Ms. Casey's recognition that at some point she would have to recuse but her unwillingness to bow to the pressure that Mr. Coleman was putting on her and as perhaps reflected in various stories in the press that she took issue with, did there exist in your view any negative effect on your investigation by reason of the time

310

period between when she recognized that a recusal would be in order and the time that she officially recused?
A The fact that -- I'd have to make some assumptions to answer that question. The only way I can see that it had a negative effect would be if Coleman was not confident that he could negotiate with Paula Casey, then it delayed the time period before he could negotiate with a DOJ person who was Don Mackay, but as far as the actual conduct of the investigation, what the FBI was doing, Paula Casey wasn't personally handling those efforts anyway, so other than an effect it may have had on the plea agreements, the investigation -- our investigative efforts weren't affected by that delay.
Q Well, we know, don't we, that the -- that there wasn't any obvious effect on the plea agreement since Mr. Mackay offered a proposition that was in some respects more liberal than what -- or more favorable to his client than what -- to Mr. Coleman's client than what Ms. Casey and Mr. Fletcher had offered and he still didn't take that to you?

311

A My point is I have no way of knowing if Coleman and Hale's mind-set was different had that delay not occurred.
Q It was not obvious to you that that appeared to have a negative or deleterious effect to the investigation by reason of Ms. Casey's delay in officially recusing? Is that your testimony?
A Yes.
Q One more thing we'll clear up if we can and then I'll be finished.
The date of your first conversation with Special Agent Kevin Kendrick was what, if you recall? And let me provide you FBI 986.
A My recollection is my first conversation with him was October 6, 1992.
Q And at that time, if I understood your testimony, Mr. Kendrick told you that he had met with several DOJ and FBI officials to discuss the Madison referral?
A That's correct.
Q Now, do you have any reason to believe that Mr. Kendrick met again with Department of Justice

312

officials and FBI officials regarding the same subject matter on October 8?
A I don't recall being informed of that.
Q Did you learn that from any source?
A I don't recall learning that from any source. I don't recall it at all.
Q Did you ever speak with Ira Raphaelson or Robert Mueller --
A No.
Q -- regarding this matter?
A No.
Q And I take it the administrative note tickler count, whatever a tickler count might be, as reflected on FBI 525 was not made available to you contemporaneous with the other two pages of that document?
A That's correct.
Q What is a tickler count?
A I'm not sure I heard that phrase before. I'm familiar with the copy count.
MR. BEN-VENISTE: I have nothing further.
EXAMINATION

313

BY MR. GICALE:
Q Kendrick called you on 10-6-92 to ask you about the referral, but I believe you also testified in response to one of Mr. Ben-Veniste's questions that you had had an earlier inquiry about matters involving the Clintons?
A That's correct.
Q When would that have been?
A That would have been in, I believe, September of 1992, mid-September of 1992.
Q Do you know who made the inquiry and how they inquired of it, what they said to you?
A Dennis Akin from the public corruption unit at headquarters made the inquiry. He telephoned for the ASAC who was out of town, and his call was routed to me.
Q Akin is at headquarters?
A Yes.
Q And what did he ask you?
A He told me that there had been some -- I don't know how he characterized it, information or rumors or whatever, that there was some information,

314

and he may have characterized it as corruption information, I'm not sure -- that may be in my mind because he was in the corruption unit -- about the Clintons and asked if the Clintons or Hillary Clinton was a subject of any investigation or if we had -- if we had information about -- or complaint -- I think corruption information about the Clintons or Hillary Clinton being involved in a conflict of interest.
Q And I take it your response at that time was what?
A My response was no. I told him that during the campaign, we had all kinds of people trying to provide what they thought was derogatory information about the Clintons, but that we had not received any corruption information like he was describing and did not have them listed as the subjects of any investigations.
Q Now, there are no other calls, other than that 10-6 -- prior to 10-6, were there any other calls prior to that that you received with respect to this?
A No.

315

Q The recusal issue, Coleman had indicated in any number of ways, through letters and through discussions, that he was not confident in the U.S. Attorney's offices -- in the U.S. Attorney's office because of -- in particular, this U.S. Attorney because of her connections to the political establishment in Little Rock; correct?

A I believe that's accurate.

Q Do you know whether or not Mr. Coleman was given the option of going to Department of Justice in Washington to talk to Department of Justice lawyers about potential plea in exchange for cooperation?

A I don't recall. My knowledge of the plea negotiations and contacts with Mr. Coleman, with the exception of the one time he called me, were secondhand from the United States Attorney's office, and I just don't have as clear a recollection of what happened because I wasn't involved in it directly.

Q Did you ever express to anyone -- recommend to anyone that if he was not confident, that that should be a course of action that should be offered to him, an option that should be offered to him?

316

A I can't recall.

Q With respect to Ms. Casey's recusal, when you described the involvement of Tucker, Ward and Smith, did she relate to you her relationships with those individuals?

A Yes.

Q And how did she describe them?

A She described Jim Guy Tucker as I believe a social acquaintance and it's my recollection that she said she had either been a guest at a party in his house or vice versa. She described Steven Smith as being a boyfriend or possibly fiance of a good friend of hers, one of her best friends, and I believe she said that she knew Seth Ward well or was friends with Seth Ward.

Q Now, when did you first form an opinion -- withdraw that.

Did you believe that she should recuse from these matters based on her relationship with these people?

A Well, I would defer to her to make the decision as to whether or not she could effectively

317

carry out her duties, but based on what she said, it would be my preference that she recuse.
Q And when did you first express that preference to her?
A To her?
Q Yes. Or did you?
A I don't know that I ever did.
Q In October of '93 when you received the second set of referrals, were you able to form an impression as to the quality of the criminal referrals received in October of '93?
MR. BITTMAN: Generally. I'd rather not get into his opinion of the referrals. Why don't you give a general description if you want and a general assessment. Is that okay?
MR. BEN-VENISTE: What does it relate to?
MR. BITTMAN: Well, I think we specifically said in the letter that a general assessment.
MR. GICALE: Right, general impression are the words.
MR. BITTMAN: General impressions.
THE WITNESS: There were nine referrals,

318

and there would be differences between the nine, but overall the referrals were detailed and specific, with the exception of one referral I remember which was somewhat general, detailed and specific in their allegations.
BY MR. GICALE:
Q Did you form an opinion as to the quality of the referrals based on your review of the specifics in them?
MR. BEN-VENISTE: Objection.
MR. BITTMAN: Yeah, I don't think I want you to answer that.
BY MR. GICALE:
Q In some questioning with respect to the letter that Mr. Banks sent, when you said that it was your opinion that the letter was perhaps too strong, you indicated that in addition to the allegations against the McDougals and Anspaugh, that there could have been other allegations in there that he could have referenced; is that correct?
MR. BEN-VENISTE: Object to the form of the question. I don't understand it.

319

THE WITNESS: I believe what I said was that his letter referenced check-kiting on the part of the McDougals, and the thing that comes to my mind now and I was thinking of when I gave that answer is that I believe the referral makes reference to, and we have referred to earlier today, an allegation that they diverted the proceeds of a home improvement loan. If that were the case, that could also be worthy of investigation in addition to check-kiting.

BY MR. GICALE:

Q So that's something else that could have been included in the letter?

A Well, I guess the letter could have been as long as the referral was if you included all the allegations in there, so I think what I said was that there were other things but I believe from my conversations with Chuck Banks that he had identified that as the most promising or the most prominently mentioned criminal activity in the referral.

Q But in any event, you believe that there were other things that you could explore as well or investigate as well?

320

A Well, the referral is a series of allegations and general suggestions, and those are items that you would want to address during an investigation, but as you start an investigation of a referral that might have, say, 30 elements to it, if you feel like you've struck pay dirt on an element early on, you could very well ignore the other elements because of the chances you have for success in prosecution on the one you have.

So I'm not -- your investigation doesn't have to be limited to what's in the referral. It can -- you could base it on information contained in old FBI case files or --

Q All right. With respect to the referrals and this concept of naming people as witnesses, based on your experience with bank fraud cases, if you have a case, for instance, where person A misappropriates funds from a federally insured bank and those funds end up in person B's bank account, would it be a natural thing to inquire somehow as to how these funds ended up in person B's bank account?

MR. BEN-VENISTE: I object. It's a

321

hypothetical in the lateness of this hour, in redirect.

MR. GICALE: I still would like an answer.

THE WITNESS: If the movement of the funds constituted illegal activity, you would trace the movement of the funds, however far along its course is necessary.

BY MR. GICALE:

Q Right. It might be necessary to interview people who were responsible or had control of the account; correct?

A It could be, just wouldn't know unless you had the situation in front of you.

Q And as a result -- but as a result, they might be potential witnesses in the case; correct?

A Well, yeah. Only to qualify though, it's case by case. When a bank robbery occurs, the FBI conducts neighborhood investigations and knocks on doors near the bank, not because they know that somebody witnessed something but because they think they might have because they were close to the situation.

322

Q But when they find the bag of money in somebody's house, that becomes a more important witness than the witness that just is the guy --

A I would agree with that, definitely agree with that.

MR. BEN-VENISTE: Well, we've gotten a long way here to the bag of money in somebody's house.

THE WITNESS: I'm sorry, I wasn't trying to say you wouldn't do that. I'm just saying that going further than what you said, not only could you consider people that were involved as the witnesses, you could even consider people that you didn't know were involved as being witnesses.

BY MR. GICALE:

Q My only point is with respect to this referral, there were people listed who were beneficiaries in this complaint, C0004, beneficiaries of misappropriated funds from a --

MR. BEN-VENISTE: That is totally and utterly untrue. If you read that referral, Mr. Gicale, and it's only 10:00 so you have a couple of hours before midnight to read it, you talk about

323

people who are referenced in that referral who are shown obituaries of --

BY MR. GICALE:

Q I'll rephrase it. There were organizations listed and there were people who were principals of those organizations and the allegation there was that those organizations, funds that were misappropriated from that bank ended up in those organizations.

MR. BEN-VENISTE: I object to --

BY MR. GICALE:

Q Correct?

MR. BEN-VENISTE: Are you talking about 0004, Mr. Gicale?

MR. GICALE: Yes, I am.

MR. BEN-VENISTE: What organization are you talking about their being principals of?

MR. GICALE: One check was a $3000 check to the Bill Clinton Campaign Fund dated April 4, 1985.

THE WITNESS: I remember that. I believe in my analysis, I made a point of the fact that the campaign received it and that did not necessarily indicate personal knowledge on the part of Bill

324

Clinton.

BY MR. GICALE:

Q Right.

A It did not rule it out, but there wasn't evidence that it existed either.

Q But to determine whether or not they had knowledge, sometimes you have to go to the individuals who receive it?

MR. BEN-VENISTE: What is the point of this?

MR. GICALE: The point is you made a point earlier in your questioning as to why someone would list these people as witnesses, the significance of listing these people as witnesses, and what I'm attempting to show is that it's not unreasonable when people who have -- perhaps organizations with people, the principals, have benefited from it could be listed as witnesses, that's not an unreasonable thing for an investigator to do, to list --

MR. BEN-VENISTE: He said they were listed as witnesses because it was a form that said list the witnesses.

325

THE WITNESS: Well, I believe you asked me why anybody would list witnesses.
MR. BEN-VENISTE: Right.
THE WITNESS: And I said that my understanding is the form had spaces for subjects and witnesses, and per my experience in the government, if there's a space on the form, you fill it out.
MR. BEN-VENISTE: I remember that.
(Laughter.)
MR. SGRO: What day was that?
MR. BEN-VENISTE: That was still today.
BY MR. GICALE:
Q But my point to you, my question to you, is it would not be unreasonable for this investigator to list people who had information -- potential information with respect to funds that eventually went into corporations that they might be principals in; correct?
MR. BEN-VENISTE: Asked and answered. What corporation, the campaign corporation?
MR. GICALE: Entities. That's one that I've just cited.

326

THE WITNESS: Well, I don't think -- I think it's reasonable for RTC to list whatever they think is reasonable on that, a person that could be involved as a witness, that -- yes, that could be reasonable.
BY MR. GICALE:
Q You also indicated that at some point in time, Mr. Pettus told you that Mr. Raphaelson -- he found out that Mr. Raphaelson had obtained information from the RTC with respect to the referrals?
A I remember him mentioning Raphaelson, and I believe that he said that there was at least a rumor or maybe there was a speculation on his part that the information came to Raphaelson from RTC.
Q He was speculating that or he --
A I don't know because I can't remember the conversation clearly, but I remember the name Raphaelson and I remember a discussion of RTC. I don't know if he definitely said the information came from RTC to Raphaelson or not.
Q And when did Pettus tell you that?

MR. BEN-VENISTE: About four hours ago in the testimony, we've covered all this. Do you have a point in this, Lou? Really.

MR. GICALE: I'm almost finished.

THE WITNESS: I believe this was around the time of the October 9 through 16 or shortly after October 16 of 1992, and the discussion was his -- either his speculation or his --

BY MR. GICALE:

Q What prompted the discussion?

A Well, I don't know. It was three years ago. I just remember a conversation that concerned where the -- how DOJ might have come to meet with the FBI at headquarters and then the phone call on October 6 was generated.

MR. GICALE: I believe that's all I have.

MR. BEN-VENISTE: Just a few questions.

EXAMINATION

BY MR. BEN-VENISTE:

Q You indicated that Mr. Coleman was concerned about the political establishment in Little Rock in connection with making a proffer of

information; is that right?

A Yes, and I would qualify that. I'm not certain what I was aware of when, but I know that there had been newspaper articles appearing and there were conversations with Mr. Coleman subsequent to January 9 of '94, that I'm aware that that has been attributed to him.

Q In your view, knowing Fletcher Jackson, do you regard him as an individual in the political establishment of Little Rock?

A I don't know who he associates with, but I would not have placed him in the political establishment in Little Rock.

Q Mr. Gicale asked you whether Mr. Coleman was instructed that he might, as an alternative, go to Washington to make his proffer to the Department of Justice. Did you have some reason to believe that Mr. Coleman didn't know the Department of Justice was in Washington?

A No.

Q Did you have some reason to believe that Mr. Coleman, if he had wanted to go to the Department

329

of Justice, wouldn't know how to find it?
A No.
Q You were advised that Jeff Gerth, a reporter for The New York Times, had spent five hours with Mr. Hale and Mr. Coleman and that those gentlemen had communicated a considerable amount of information to Mr. Gerth; isn't that so?
A Yes.
Q And you knew that at a point in October of 1992?
A I think we're into 1993, and I believe it might have been September. That Hale -- Hale was --
Q '93, sorry. September of '93?
A I believe that's the case.
Q Okay. Now, this was at a time prior to -- well, prior to any proffer that Mr. Hale may have ultimately made to somebody in connection with his ultimate plea agreement; correct?
A Yes.
Q And was there some serious suggestion that having spent five hours talking to a reporter that the FBI was then going to wire this guy up and send

330

him out somewhere to do some undercover investigation?
A I don't remember that being discussed in conjunction with him meeting with a reporter.
Q Was there any notion that he would be a viable undercover candidate following five hours of telling his story to a reporter?
A I think that's a very negative item to be considered in his effectiveness, and I've already stated the concerns about his close associates being aware of it and the concern for false exculpatories, and the last thing that the FBI would want at that point would be to be dealing with somebody like that that was in contact with a reporter.
MR. BEN-VENISTE: I have nothing further.
EXAMINATION
BY MR. GICALE:
Q While Mr. Jackson was not a part of the political establishment, he had to answer to his supervisor in terms of getting a plea approved; correct?
A That's my understanding.

331

Q And his supervisor in late August and September was Paula Casey; correct?
A That's correct.
Q Mr. Coleman did not trust Paula Casey to make the right decision; correct?
A That's my understanding.
MR. GICALE: I have nothing further.
MS. SIMONTON: Come on. Resist it, Richard.

EXAMINATION

BY MR. BEN-VENISTE:
Q Was there any suggestion that the plea agreement that Fletcher Jackson was proposing was in any way unacceptable to Ms. Casey?
A I'm not sure of what Fletcher Jackson proposed as a plea agreement, but I know Paula Casey personally assured me that she was in support of and agreed with the FBI position that Hale should plead to a felony count.
MR. BEN-VENISTE: My question, read it back, please.
MR. BITTMAN: He answered it. He said he

332

wasn't sure.
(The reporter read the record as requested.)
THE WITNESS: I don't know what plea agreement he suggested to Ms. Casey.
BY MR. BEN-VENISTE:
Q Knowing what you know about what was suggested, do you have any reason to believe that Ms. Casey was unsupportive of the plea agreement that Mr. Fletcher Jackson had proposed?
MR. GICALE: You know, I'm going to object to this. He doesn't know what he was --
MR. BEN-VENISTE: He knows whether Ms. Casey provided any information to him or he received it from any other source as to whether she didn't like Fletcher's proposal. That's the only question I've asked.
THE WITNESS: I don't remember any discussion of whether Paula Casey liked Fletcher's proposal.
BY MR. BEN-VENISTE:
Q Therefore you have no reason to believe that she opposed it, do you?

A I don't have any knowledge of it, so I don't have any reason to believe there was any opposition to it.

MR. BEN-VENISTE: There you go. Thank you.

(Whereupon, at 10:18 p.m., the deposition was concluded.)

STEVEN D. IRONS

CERTIFICATE OF NOTARY PUBLIC & REPORTER 334

I, CARMEN BUNCH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Notary Public in and for the
District of Columbia

My Commission Expires MARCH 14, 1998

DEPONENT STEVEN D IRONS

ERRATA

PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
27	11-12	FROM "Assistant special agent in charge"		
"	"	TO "Assistant Special Agent in Charge"		
"	"	FROM "special agent in charge"		
"	"	TO "Special Agent in Charge"		
29	17	"CHERTY" TO "CHERRY" / "stole" to "STOLE"		
35	16	"MEMORANDUM" TO "MEMORANDA"		
35	18	"division, since" TO "division, since"		
35	19	"division, that" TO "division. That"		
47	16	"REFERENCE CHECK POINTS" TO "reference Check Banks"		
54	18	OF FBI TO "of the FBI"		
68	14	"tell Department" TO "tell the Department"		
84	1	"that had spoke" to "that spoke"		
95	22	"ROCK's office" to "ROCK OFFICE's"		
148	21	"office and Littlerock" to "office in Littlerock"		
166	3	"plea" to "plead"		
175	13	"consensum" to "consensually"		
189	12	"directe" to "Director"		
204	15	"this" to "has"		

DEPOSITION OF BRUCE R. LINDSEY
IN RE: S. RES. 120

FRIDAY, NOVEMBER 3, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of BRUCE R. LINDSEY, called for examination pursuant to notice of deposition, at 9:40 a.m. in Room 534 of the Dirksen Senate Office Building, before SHEILA M. LYONS, a Notary Public within and for the District of Columbia, when were present:

ROBERT J. GIUFFRA, JR., ESQ.
Majority Chief Counsel
ALICE S. FISHER, ESQ.
Majority Deputy Special Counsel
NEAL E. KRAVITZ, ESQ.
Minority Principal Deputy Special Counsel
GLENN F. IVEY, ESQ.
Minority Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

WILLIAM D. NUSSBAUM, ESQ.
Hogan & Hartson
555 Thirteenth Street, NW
Washington, DC 20004
On behalf of the Deponent.

CONTENTS

WITNESS	EXAMINATION
Bruce R. Lindsey by Mr. Giuffra	9

3

PROCEEDINGS

Whereupon,

BRUCE R. LINDSEY

was called as a witness and, having first been duly sworn, was examined and testified as follows:

MR. GIUFFRA: Good morning, Mr. Lindsey. My name is Robert Giuffra. I'm the chief counsel of the Senate Banking Committee. To my left is Neal Kravitz who is the principal Democratic deputy special counsel. And further on down is Glenn Ivey who is deputy special counsel for the Democrats.

This is a deposition that is being conducted pursuant to Senate Resolution 120. This resolution establishes a special committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings & Loan, Capital Management Services, Inc. and the Arkansas Development Finance Authority and other related matters.

You have discussed with your counsel that today's deposition would be dealing with the

4

provisions contained in section 1(b)(2) of Senate Resolution 120, those issues might be described generically as the Washington issues.

We realize that you previously testified with regard to the RTC aspects of this back in 1994, and I will certainly endeavor to the absolute best of my ability to stay away from those areas and not to get additional testimony.

This is a deposition that is being conducted in advance of a public hearing in November. Let me also just, maybe put this on the record. In my conversations with Mr. Nussbaum, your counsel, we both agreed there would likely be a later deposition dealing with the matters specified in section 1(b)(3) of the resolution. Is that something that you can agree with?

MR. NUSSBAUM: I can agree we discussed that and I'm quite confident you will pursue that. If you want to take his deposition.

THE WITNESS: I will probably show up if you want to take my deposition.

MR. NUSSBAUM: We can squeeze him in with

5

all the other depositions. When you are done, there is something I would like to put on the record.

MR. GIUFFRA: Would you like to state an appearance.

MR. NUSSBAUM: For the record, I'm Bill Nussbaum on behalf of Mr. Lindsey. I just wanted to state the following for the record.

I had a conversation this morning with the White House counsel's office about the question of what, if anything, they regard as privileged that they might ask Mr. Lindsey about. My purpose in having this was I do not want to encounter the problem that we encountered last time in which we had to take breaks from time to time so that I could attempt, at that time unsuccessfully, to reach someone in the counsel's office to resolve certain questions about whether they were willing to waive privilege.

I want to state my understanding from them of what they deem privileged so you know in advance, and if it differs from the understanding, if any, whatever one you have from them, we can discuss it.

6

They are with respect to attorney-client privilege and of course this is the White House's privilege, any discussions involving Mr. Kendall, any discussions between Mr. Lindsey and the President in which Mr. Lindsey was serving as a legal advisor to the President, are areas in which I will assert, should you ask a question that calls for an answer in those areas, in which I will assert privilege.

As I understand it, with respect to the question of executive privilege, I'm advised by Jane Sherburne that the White House counsel's office has worked with you, with the committee, cutoff dates for the five areas, A through E, in section (b)(2), A, B, and D, have cutoff dates of March 4, 1994, C and E have cutoff dates of August 5, 1994.

And what I understand from Jane Sherburne for that to mean is this with respect to, for example, to A, B, and D, you will not be asking questions or seeking to elicit information about things that might have occurred after March 4, 1994. With respect to C and E you will not be seeking to elicit information about things that occurred after

7

August 5, 1994.

Anything before those dates, my understanding is the White House counsel's office is not claiming any sort of executive privilege, and therefore Mr. Lindsey will be more than happy to answer those questions. With that, I have nothing further to say.

MR. GIUFFRA: The only thing I would state so the record is clear, we haven't worked out cutoff dates with the White House on these matters in quite the way you specified. The subpoena was served on the White House which specified that we were seeking documents for certain periods and that subpoena was done because of the problem with the White House having to produce huge quantities of documents and then having to go through and prepare a giant privilege log.

At least that was the understanding of the majority. This was not a cutoff date for all purposes, and that would apply to document productions of individual witnesses. But I think that these will provide some guidelines for you in

8

going through the deposition and if you have a problem, we will deal with it.

(Discussion off the record.)

MR. GIUFFRA: Just some basic preliminaries, we have gone through this before. Our procedures are set forth in Senate Resolution 120, I will first be asking you a series of questions, then someone from the Democratic side will be asking a series of questions. We may have additional rounds of questions.

If at any time today you have a question about, or one of the questions is confusing or ambiguous, please let us know and we will rephrase the question. If at any time you need a break, let us know. You will be testifying under oath. The stenographer will be preparing a record of the questions and answers, the deposition will be treated as committee confidential until the commencement of the hearings.

Sometime prior to the hearing you will receive a letter from the committee advising you you may come to the Senate to review your transcript to

make note of any corrections in terms of transcription or errors -- strike that.

Any corrections in the transcription on an errata sheet. You will also be given an opportunity to have a copy of the transcript four days before any testimony you might give. You have a right to be represented by counsel. You have chosen to do so. Objections to the form of the question will be noted for the record. Counsel may also object on privilege and relevance grounds. The committee chairman will rule on objections in the event that someone -- if you refuse to answer a question.

Why don't we begin. Do you have any questions, Mr. Lindsey?

THE WITNESS: No.

EXAMINATION

BY MR. GIUFFRA:

Q Would you state your name for the record?

A Bruce Robert Lindsey, L-i-n-d-s-e-y.

Q And your present business address?

A The White House, west wing.

Q And your present position?

A Assistant to the President and deputy counsel.

Q Do you know Paula Casey?

A I know her, I don't know her well.

Q Do you know Gil Glover?

A Yes.

Q Who is Gil Glover?

A Gil Glover is Paula Casey's husband.

Q What is the nature of your relationship with Mr. Glover?

A He was involved in Democratic politics in Arkansas and I would see him at Democratic functions.

Q Did you have any role in the appointment of Paula Casey as U.S. Attorney for the U.S. District of Arkansas?

A At the time I was director of the office of presidential personnel, and we did all appointments, including U.S. Attorney appointments. However, where there were Democratic Senators, we tended to defer to the Democratic Senators on recommendations for U.S. Attorneys, U.S. marshals, and federal district judges.

11

Q And in the case of Paula Casey, was she someone who was recommended to the White House by one of the two Democratic Senators from Arkansas?
A Yes, she was represented by Senator Bumpers and Senator Pryor.
Q Since January 20, 1993, have you had any communications with Paula Casey?
A No.
Q Since January 20, 1993 have you had any communications with Gil Glover?
A Not that I recall, I don't believe so.
Q Do you know a man named Fletcher Jackson?
A Fletcher Jackson, I know who he is, he is an assistant U.S. Attorney in Little Rock, but I don't know him.
Q Since January 20, 1993, you have had no communications with Fletcher Jackson?
A No.
Q Do you know someone by the name of Michael Johnson?
A No. Not that I recall.
Q During your deposition in 1994, you

12

indicated that you were residing with Erskine Bowles?
A For about a two-week period.
Q That two-week period was when?
A Whenever the deposition was. Was that April?
Q July.
A July.
Q What is the nature of your relationship with Mr. Bowles?
A At the time he had an extra bedroom. He was the director, I guess, I am not sure, administrator, I guess, of the Small Business Administration. I first met Erskine during the 1992 campaign. He now is deputy White House chief of staff. And my relationship with him is more business.
Q Prior to coming to the White House, did you know a man named David Hale?
A I knew of him. But only, but not in any, neither socially or business, I had no business dealings with him. Again, Arkansas is not huge. If I saw him on the street, he might know who I was and

13

I would know who he was, but beyond that, no.
Q He was a municipal judge in Little Rock?
A Little Rock.
Q Did you know a man named -- strike that.
Do you know a man named Randy Coleman?
A I know he is an attorney in Little Rock. Again, other than maybe just, I would not recognize him if he walked in here.
Q Since January 20, 1993, have you ever spoken to Randy Coleman?
A No.
Q Did there come a time in 1993 when you learned of an SBA criminal referral relating to David Hale?
A 1993?
Q Correct.
A I don't think so. Can you tell me when he was indicted?
Q He was indicted on September 23, 1993.
A 1993. Well, then obviously yes. I don't know if I ever knew there was a criminal referral. I knew shortly before he was indicted that he was under

14

criminal investigation.
Q How did you come to learn shortly prior to September 23, 1993 that Mr. Hale was under investigation?
A I believe through Jeff Gerth.
Q And Jeff Gerth is?
A A reporter with The New York Times.
Q Your recollection would be that Mr. Gerth contacted you?
A Yes. The reason I hesitate was several days before he was indicted, there was a story in the Arkansas newspaper in which he said that he expected to be indicted. But I believe maybe the Saturday before that story appeared, Jeff Gerth told me that he had conducted two or three days worth of interviews with David Hale.
Q What are the two main papers in Little Rock?
A There is only one now. Used to be the Arkansas Gazette and the Arkansas Democrat. The Arkansas Democrat bought out the Arkansas Gazette and now is called the Arkansas Democrat-Gazette.

15

Q Are stories from the Arkansas -- strike that.

During 1993, were stories from the Arkansas Democrat or the Arkansas Gazette regularly included in the White House press clippings?

A No.

Q Have you ever discussed David Hale with Mr. Bowles?

A Don't believe so.

Q During -- strike that.

During August, 1993, did William Kennedy advise you of a communication that he had with Randy Coleman with regard to David Hale?

A Yes. Well, I think Jeff Gerth told me first that Randy Coleman said that he had talked to Bill Kennedy. I think I then spoke to Bill Kennedy and he said yes, he had.

Q So your testimony is that you probably learned this fact first from Gerth?

A I think so.

Q What did Mr. Kennedy say to you about this communication that he had with Mr. Coleman?

16

A He indicated that Randy Coleman had called him, indicated that he, Mr. Coleman, had a client, that Mr. Kennedy had a client who had mutual interests.

Q Who did you understand Mr. Kennedy's client to be?

A Well, in the context of when I heard it, I took it to be the President. And that they should get together and talk.

Q Did Mr. Kennedy advise you as to what was the subject matter about which Mr. Coleman and he should talk?

A Again, I think it was after my conversation with David, with Jeff Gerth, so I think the context in which -- whether he advised me or not, I clearly had the context of the discussion, because it was after I had had the conversation with Gerth in which he had outlined to me what David Hale was claiming.

Q What was David Hale claiming?

A David Hale was claiming that he met, saw, the then governor, now President, on three occasions sometime, I don't even remember, in the '80s, I

17

guess, in which the President, then governor, encouraged him to make a loan to Jim, Susan McDougal.

Q And that was to an entity called Master Marketing?

A I don't think I knew that at the time, but later, yes, I mean the loan was made to an entity called either Master Marketing or Madison Marketing, but anyway, yes.

Q Do you know Beth Nolan?

A Yes.

Q Who is Beth Nolan?

A She is an associate White House counsel, was associate White House counsel, now a professor at George Washington University Law School.

Q Have you ever discussed any communication -- strike that.

Have you ever discussed with Beth Nolan any telephone conversations that she was a party to with Mr. Coleman?

A I don't know the answer to that. When I talked to Kennedy about this matter, he explained

18

what they did. How they, that he got this call that, that he spoke to Bernie, that the decision was made they would not have any conversations with Mr. Coleman, and that Ms. Nolan was on the phone call made back to Mr. Coleman. Now whether or not I, Beth had said anything to me about that independently or not, I couldn't tell you, but I do know that that was the context.

Q Do you have any understanding as to the reason for the second phone call to Mr. Coleman?

A I believe to tell him that Bill had no interest in meeting with him to discuss the matter that he wanted to discuss.

Q Did you have any understanding as to whether there was any attempt being made by Mr. Kennedy or Nolan to obtain information from Mr. Coleman about the allegations that Mr. Hale was making about the President?

A I don't know anything about that.

Q Did you ever discuss with Mr. Nussbaum any communications that Mr. Kennedy had with Mr. Coleman in August of 1993?

19

MR. NUSSBAUM: Bernie Nussbaum.
THE WITNESS: Again, I think I learned most of this through Bill Kennedy. Whether or not Bernie and I had ever mentioned it or talked about it or not, I really can't answer. But basically what I just outlined to you is the extent of my knowledge. And I think I learned it from Bill Kennedy, who I may have gotten confirmation of snippets of it from either Beth or from Bernie.
BY MR. GIUFFRA:
Q Have you ever discussed with Webster Hubbell the fact that Mr. Coleman had contacted Mr. Hubbell during the summer of 1993?
A No.
Q Do you have any understanding as to whether Mr. Coleman contacted Mr. Hubbell during the summer of 1993?
A I have either read it in Web's testimony or in a newspaper article, that I think Mr. Coleman contacted him about an unrelated matter, but other than what I have read, no.
Q I would like to show you a document which

20

bears Bates number JML 2432, 2433. Have you ever seen that document before?
A I don't recall. I don't know. I don't recall.
Q Who was Mr. Lyons?
A Jim Lyons was the attorney who was a member of our attorneys committee during the 1992 campaign, who was tasked with the Whitewater matter and contracted with Patten, McCarthy, which is, was called Patten, McCarthy, now Patten, McFee & Associates, which is basically an accounting firm, to do a reconstruction to the extent we could from the records we had of the books of Whitewater, to try to determine the Clintons' investment and loss from that investment.
Q During 1993, did you regularly communicate with Mr. Lyons?
A Yes.
Q What were the subject matters about which you regularly communicated with Mr. Lyons?
A Well, he and I are friends, so at different times we would communicate about different matters.

21

We communicated about appointments in Colorado, we communicated about our families, we also communicated about, especially during the time when I was handling the press inquiries, about Whitewater.

Q Mr. Lyons has indicated to the committee that he believes that he would have faxed this analysis to you?

A Very possibly he would.

Q But you have no recollection of ever receiving this analysis?

A I have seen analyses like that, that they did. Now whether or not I have seen that one, I don't recall. We did, several times we did those to try to trace money in and out from the records we had.

Q Now, Mr. Lyons also indicated that this was analysis that was prepared during 1993. Do you have any recollection of this analysis or similar analyses being prepared during 1993?

A Again, I'm having trouble on the dates. I believe the first time I heard of Madison Marketing maybe was in this conversation with Gerth. He

22

indicated in that conversation that some of this money that Hale had had gone into Whitewater. First time I had heard of that.

I may have called Jim, it's possible, and said can you try to determine whether or not that happened, you know, and see. And this analysis could have been prepared to try to do that. Again, all of that would be something I might have done, but I don't have any recollection of doing it.

Q Your best estimate of the conversation with Mr. Gerth is sometime in September, probably, 1993?

A I have a document that reflects it. So I don't have a recollection. I'm sorry. It was shortly before he was indicted, because --

Q Shortly before Hale was indicted?

A Before Hale was indicted, yes.

(Discussion off the record.)

BY MR. GIUFFRA:

Q Mr. Lindsey, have you received a subpoena duces tecum from the Banking Committee -- Whitewater committee?

A Yes.

23

Q And have you taken steps to comply with that subpoena?
A Yes.
MR. NUSSBAUM: Let me respond on Mr. Lindsey's behalf. Following up on the conversation we just had off the record. Yesterday afternoon I produced on Mr. Lindsey's behalf, along with a cover letter to you, Mr. Giuffra, with a copy to Mr. Kravitz, both of which were delivered to Mr. Kolinski, as we were instructed to do, a number of documents which consisted of Mr. Lindsey's responses to inquiries from the press or in one particular case, there are notes of conversations with a reporter. There were two press-related documents that we did not produce, but instead turned over to the White House counsel's office, because there were privilege issues attached to those documents and as my letter stated, the White House counsel's office will be dealing with you directly about them.
We also produced one additional document which we had inadvertently failed to produce the

24

first time through, which was notes of a conversation Mr. Lindsey had had with an individual, I think, named Jim Blair. Those were produced yesterday I believe before 3:00 and I'm somewhat disheartened that they didn't make their way to you.
(Recess.)
BY MR. GIUFFRA:
Q Mr. Lindsey, do you want to in any way amend your prior answers to your testimony so far today?
A Don't think so.
Q Calling your attention to a document bearing Bates number BL 11714, 11715, the letter.
A Okay.
Q What is this document?
A At some point Jeff Gerth and, I guess, in, I guess, August of 1994 asked a series of questions about the 1990 campaign, primarily about the loans, and I wrote him a letter in response.
Q Do you recall when Mr. Gerth made the request?
A I would think several weeks before this.

25

Q Did Mr. Gerth make the request in writing or over the telephone?
A I didn't speak to Mr. -- I think he made it to John Podesta.
Q Turning your attention to documents BL 11717 through 11731, what is this document?
A That is two documents.
Q I'm sorry. Two documents. I went too far. BL 11728 is the end of the document which begins at 11717.
A Yes.
Q Those are notes of a meeting that you had with Mr. Gerth?
A Yes.
Q When was that meeting?
A The notes reflect 9/20.
Q On the left-hand margin there are some initials.
A MG, BRL, DG.
Q Who are reflected by those notes?
A Mark Gearan, Bruce Lindsey, and Gerth.
Q Do you normally keep notes of conversations

26

of meetings?
A Depends on what the purpose of the meeting is. This meeting was Jeff Gerth asking to see us, to tell us about two or three days he had spent in Little Rock interviewing Hale. So I kept notes.
Q When do you estimate that you first heard of allegations that Mr. Hale was making?
A I believe at this meeting.
Q At this meeting. Did he tell you about the allegations prior to the meeting?
A No.
Q This would have been the first time you learned about the Hale allegations?
A Yes. Again, I don't believe, I think Jeff Gerth spoke to someone other than me about this.
Q And you came to the meeting?
A I came to the meeting.
Q If you could just read, I know it's somewhat tedious, but just read through the notes so we have them in the record.
A Okay. "If affidavit differs, stop."
Q What does that indicate to you?

27

A I think that Jeff said that following their interviews, they had put certain things that he had said into an affidavit, including certain statements he made and they had sent it to him, and if he backed away from those statements, if he said that that wasn't right or something, that would be the end of it. So he was trying, I think, to tell us that we are not, we are not there yet. We are not vouching for his credibility. We sent him an affidavit. If he signs it, we may go witness. If not, we are going to stop.

Q Okay. What is the next notation?

A "Some documents, most of it doesn't have to do with this."

Q What does that indicate to you?

A I'm speculating that he indicated that they had seen some documents but most of it didn't have to do with this particular transaction.

Q Okay. Next notation?

A "In some ways, boils down to this man's word as to what happened."

Q Okay. The next entry?

28

A "Judge David Hale, sitting judge, some credibility, also facing an indictment."

Q Then there is a notation to the left.

A "Gearan left."

Q The next entry?

A "Three days, six hours of interviews first day, colleague interviewed second day, both interviewed. His attorney approached New York Times."

Q The next entry?

A "Small Business Investment Corporation, Capital Management Services, 1979, only loaning your money, $500,000 of his money."

Q What does that indicate to you?

A I don't know. Again, I think he was telling me that Capital Management Services was a Small Business Investment Corporation that was created in 1979. I don't know what only losing your money means -- excuse me, "only loans your money" means; "$500,000 of his money" I guess is a reference to his investment in it. "His" being David Hale.

Q Okay. The next entry?

29

A "BC," Bill Clinton, "called him several times." Again, all this is what David Hale related to Jeff Gerth, and what Gerth related to me. None of this is factual, because it's here, it's only here because, that is, I was writing down what they were telling me. "Bill Clinton called him several times in 1980 concerning SBIC."

Then it says "BC called, consultant from San Francisco, see if state could" -- and I can't read the last word. "Clematco," which I assume is a company, I can't read the next word, loaned something, looks like. "BC wanted him to make."

I think these were where he said that Clinton called him several times in 1980. These were what he was saying were the several times that Bill Clinton had called him.

Q What does the notation on the left side indicate to you?

A "Not improper." I probably made a note that these sorts of inquiries would not be improper. "October, fall of 1995, conversation with Jim McDougal and joint conversation with Jim McDougal and

30

JGT," which would be Jim Guy Tucker.

This is then quoting what he said. "McDougal told them we have some stuff we need you to do and some friends in political family who need some help. McDougal: We need to find you more money. McDougal: Bank examination needed to get some loans out of bank."

Q Can I ask a question. Was Mr. Gerth reading from notes during this meeting?

A I think so. I don't recall it, but the way, the fact that I put quotes would seem to suggest that he was looking at something and not just talking off the top of his head at this point. And these may be the kinds of things that he was telling me early on that we are going to put in an affidavit and if he backs away from them, we are through. "Look at Hale's financials, get him more capital. Loans, Castle Water & Sewer, $150,000, JGT, Steve Smith loans, $65,000, Susan McDougal, $150,000 at the time, later $300,000."

Q And the notation between there?

A Up at the top, "not permissible."

Q What does this indicate?
A Again, I'm personally speculating, but I think Hale was telling Gerth that he had made these loans that were not permissible loans, but he had made them.
Q Okay.
A "JGT," Jim Guy Tucker, "and McDougal has his 'tit' in a ringer." I think that is Jim Guy Tucker saying that McDougal has his "tit in a ringer."
MR. NUSSBAUM: That is Gerth saying that Hale is saying.
THE WITNESS: That's right. "Jim Guy Tucker, in his wife's name and another person in his cable company, W&S loan, impermissible."
BY MR. GIUFFRA:
Q Do you know what this refers to?
A I don't know what W&S is. Oh, water and sewer, I assume W&S refers back up to. Do I know what this is, this is basically what Jim Guy Tucker has now been indicted about. This is basically in his wife's name and another person, I think is the

loan to the cable company. There is a Castle Water & Sewer loan, I think may be the subject of the second indictment.
Steve Smith pled guilty to I think a misdemeanor charge with respect to a loan to a company he had. And the Susan McDougal loan is the $300,000 loan that was made to either Madison Market or Master Marketing, whatever the name of the company is.
Q Do you know whether there is a Madison Marketing and a Master Marketing or if it's just Master Marketing?
A I don't know. This reflects Madison Marketing.
Q This is the document bearing Bates number JML 2433. Let's go to the top of page 3.
A Okay. "DH," would be David Hale, "understood from McDougal that one of the loans was connected with BC," Bill Clinton. "December, 1985. 'He simply said are you going to be able to help Jim and I out.' David Hale working on it hard. D.C., I would really appreciate it."

33

I think this was one of the three conversations he claimed he had with Clinton in which Clinton made reference to the loan.

Q Three conversations in '85?

A I don't know whether they were, I guess they were. This is December of '85, I think the other two may have been in '86. I think this is the first of the three, so my guess is the others are in '86.

"Examiners arrived at Madison, two things, up the capital. DH had a piece of land, find someone to buy it, inflated price, appraised for $750,000, worth $500,000. Madison Guaranty loaned $825,000, minus the $500,000 that the property was worth at that time. Minus $500,000, went to Capital Service Management."

And then over at the side "2/28/86." I think that is when this transaction supposedly took place.

Q Then you have denoted "Madison to Hale"?

A "SBIC to entity."

Q What does this notation refer to, best you

34

can recall?

A I don't remember. I think I was, he was trying to explain to me how this supposedly worked. This is what David Hale said is the way they got more value into Capital Management, which allowed Capital Management to then loan more money out. And the way they did it was they took a piece of property that was valued at $500,000, found some buyer who bought it for $825,000, apparently, on -- it's not in here, on a nonrecourse loan so if they defaulted they would only get the land back. Paid off the mortgage, took the $300,000, left or whatever and transferred it into Capital Management. And that would then allow Capital Management to go out and get more lending authority from the SBA to make the loans that he said he made to Castle Water & Sewer and so forth.

Q Is there any connection between this transaction on the lower half of page 3 of your notes and the reference to then-Governor Clinton at the top of the page, on page 3?

A Not that I'm aware of, no. It relates more back to McDougal on page 2 saying we need to find you

35

more money. I think this was the way that Hale says he and McDougal schemed to up the capital for Capital Management so there would be money to lend to these other entities.

Page 4. "February/March, 1986, the four land deal didn't have money prior to February 28, 1986." Again, I think that is a reference to until they got more money into Capital Management, Capital Management couldn't lend money out, because it didn't have any authority, didn't have any additional loan authority.

"Telephone call from Jim McDougal." McD is McDougal. "McDougal, BC, wanted to see him. Went to an office that Jim McDougal was operating out of."

Q What does that indicate to you?

A Again, I think David Hale is saying that he got a call from McDougal saying Bill Clinton and I want to see you. He went out to his office on 145th Street, he says, and he met with Jim McDougal and Bill Clinton. Bill Clinton, by the way, denies this ever occurred.

36

MR. NUSSBAUM: Let me jump in here. We seem to be playing a number of reels here. You want him to read this. Just so we are clear this is what is being reported to him by a reporter of a conversation the reporter had with a third party. I don't know how the witness can know what Hale meant when he said it. I would actually caution the witness not to try to psychoanalyze -- it's hard enough to psychoanalyze what you hear but to psychoanalyze double hearsay is especially dangerous.

MR. GIUFFRA: Let's go off the record a second.

(Discussion off the record.)

THE WITNESS: Okay. My trying to interpret these, you need to understand that what I'm doing is I'm taking what I heard then as reflected here and also what I now know, at least are allegations based upon newspaper stories, indictments, other pieces of information, and trying to interpret.

I cannot tell you that I understood what all of this, all of the explanations meant on

37

September 20, 1993 when I had this conversation. It makes more sense to me now than it did then.

So, with the caveat, that explanation, I can't get into David Hale's mind, I don't know exactly what he meant, but I do know how this has played out since then. Okay. "Casa Grande, 145th Street, Madison Guaranty Service Corp., invested." I don't know what that means.

BY MR. GIUFFRA:

Q What about 145th Street, is that where the office was?

A Yes, I think he is saying that is where the office was. "6:00 to 6:30 p.m. McDougal. BC in jogging clothes." I think he was saying Bill Clinton was in jogging clothes. "When he walked in 'cussing out Frank White.'" Frank White was the former governor who had, was governor and then, well, Clinton was governor, Frank White beat him and then Bill Clinton beat Frank White.

Q Who is the "he" he is referring to?

A When he walked?

Q Yes.

38

A I think he is David Hale. When David Hale walked in at 6:00 or 6:30, I think he is saying Bill Clinton and Jim McDougal were cussing out Frank White.

Q Okay.

A "Talking about Jim McDougal holding a fund-raiser with S&L for BC."

Q That is what McDougal and Clinton were talking about, that?

A I think that is what that, what Jeff Gerth was telling me David Hale was telling him. "20-minute discussion, purpose of loan was to clean up" -- this is McDougal's words -- "books or records at Madison Guaranty. A transaction that had indirectly benefited Whitewater."

Q What does this indicate to you?

A Again, I think he said they had a 20-minute discussion and they discussed the purpose of the loan was to clean up books and records at Madison Guaranty. "A transaction that had indirectly benefited Whitewater." I later learned, I think it relates to the International Paper purchase.

39

Q Do you have any recollection as to whether what Mr. Gerth was recounting Hale was talking about, that he talked about Whitewater during the course of the alleged conversation between 6:00 and 6:30 at McDougal's office?

A No, I don't have any sense that that may have been editorializing by Gerth, saying cleaning up the books of Madison indirectly would help benefit Whitewater. I don't know whether that was Gerth's editorializing or a statement by him.

Q Okay.

A "Both McDougal, BC participated. It was a natural thing. My name cannot show up anywhere on the thing."

Q What does that refer to?

A I don't have any idea. I don't know who "my name" is.

Q Next entry?

A "We could give you some security for the loan, Marion County properties as possible securities." I think this is all related to what they talked about, what David Hale says they talked

40

about for the 20 minutes. "Very nervous, said this had to get done."

Q Who is supposedly very nervous?

A I'm guessing, I think probably McDougal.

MR. NUSSBAUM: Don't guess.

THE WITNESS: "We got to clean it up. All I know is they had a problem, bad problems, something to do with the examination."

"All I know," I think is David Hale.

"We could offer some security if you need something for your file. All I can remember is white something."

BY MR. GIUFFRA:

Q What does this refer to?

A Well, go back up. "We could give you some security for loans, Marion County properties as possible security. We could offer some security if you need something for your file. All I can remember is White something."

I think David Hale was saying he couldn't remember what property they were talking about, but he remembered they had the name "White" somewhere in

41

it. Marion County is obviously where the Whitewater property is located.

"Understood that BC's name couldn't show up. McDougal: I have already taken care of that. We were talking about loaning Susan's company $150,000 because of problems Madison was having." The last line is lost.

"Unrelated entity, if this unrelated entity isn't satisfied, could be discovered by the regulators."

Again, I can speculate about what that means, but I don't know.

MR. NUSSBAUM: But you won't. Thank you.

THE WITNESS: But I won't. "Several days later McDougal calls." Again, this is David Hale supposedly speaking. "Susan McDougal dba Master Marketing, $300,000, no endorsement on back, April 3, 1986."

BY MR. GIUFFRA:

Q What does that indicate to you?

MR. NUSSBAUM: What does it indicate now? I don't want to obstruct. I don't want to object at

42

all, but just so we have some context here. He is reading notes of what a reporter is telling him, someone else is telling him.

BY MR. GIUFFRA:

Q Just, the reason --

MR. NUSSBAUM: And you are asking what it now means to him? It's a slippery slope.

MR. GIUFFRA: The reason we are going through that is, as I indicated on the record, which I should state on the record, David Hale is obviously an important witness in this entire matter. And statements he made to Jeff Gerth in this period of 1993 are obviously relevant and we are obviously not going to get Jeff Gerth's notes of the conversation, so this is the best proxy we have.

MR. KRAVITZ: My suggestion would be why don't we make the questions clear, that at least initially you are asking Mr. Lindsey to interpret his notes as to what his best recollection is that Gerth told him at this meeting on September 20 and then maybe ask a follow-up question whether he can expound on it, but just so the record is clear, try to

separate those two aspects of the testimony.
MR. GIUFFRA: That is fine.
THE WITNESS: Okay, I'm going to just do it.
BY MR. GIUFFRA:
Q If you have any recollection as to what the notation "Susan H. McDougal dba Master Marketing $300,000, no endorsement on the back, April of 1986," what that refers to?
A That refers to a loan was made by Capital Management to Susan McDougal doing business as Master Marketing in the amount of $300,000, April 3, 1986, I'm guessing is the date of the loan, of the check. And I think, I don't know, maybe Gerth told me there was no endorsement on the back of the check.
Q Okay. The next entry?
A "Capital Management Services, Inc., (501) 664-8613, 1910 North Grant, Suite 200, Little Rock, 72007, signed David Hale."
I think he was describing the check to me.
Q Okay. Next entry?
A I don't know what the word is before

"loan," looks like for. "For loan," doesn't make any sense to me. Could be the word "Friday."
MR. NUSSBAUM: Just read what you can read.
THE WITNESS: The next word seems to be Thursday, but I can't be sure. "Personal account converted into two cashier's checks, how did this qualify for loan for disadvantaged, never met, statement of purpose, marketing, advertising, January 1986, 2.2 million financial statement."
BY MR. GIUFFRA:
Q What does this entry, what do you think Mr. Gerth was indicating to you by this entry?
A I think he was telling me that the $300,000 check was converted into two cashier's checks. I think I may have asked, I don't know, I don't know. "How did this qualify," I think we then had a discussion about whether it qualified and he told me there was a January 1986 financial statement showing worth of $2.2 million, and they had a statement of purpose which showed that the purpose of the loan was marketing, advertising. Okay.
Q Okay.

45

A "1986 bank examination, affiliated transactions, conflicts of interest."
Q What does that mean?
A I think --
Q What do you think --
A I think he was referring to, that the bank examination made reference to various affiliated transactions and possible conflict of interest by the McDougals in those transactions. I don't know what the word is at the side. "Madison Marketing 100 percent owned by Susan McDougal."
MR. KRAVITZ: Is that "Latham" on the side?
THE WITNESS: Could be. John Latham was the president of Madison. "President told examiners," I think Latham told the bank examiners sometime that "Madison Marketing perhaps ceased functioning as a corporation in February 1986 and became a dba Madison Guaranty."
BY MR. GIUFFRA:
Q The next entry?
A That "Madison Guaranty or its subsidiaries

46

were the sole source of funds for Madison Marketing, then inflated."
I think the first part is self-evident. I think "inflated" means the prices they charged were inflated. I think that was the allegation.
"Did Madison Marketing funds go to any shareholder, President said no. $50,000 to Susan McDougal."
Again, I think this is a discussion maybe of what Madison Marketing is in the 1986 examination by the bank examiners.
"Madison Marketing advancing money to Whitewater." I may have asked to find out if that was in fact true.
Q And by "that" you are, that --
A Again, I don't remember that document.
Q This is the Lyons document?
A This is the Lyons document. I don't remember the document but here is a reference to Madison Marketing advancing money to Whitewater. I may have asked Jim if there is any indication that Madison Marketing had advanced money to Whitewater.

47

Q Do you recall any discussion of anything more about what Mr. Gerth might have told you about what Mr. Hale was saying about Madison Marketing advancing money to Whitewater?

A No. "1/18/86, Jim McDougal, Security Bank of Paragould, Whitewater check, loan, 1975585."

Q What does that entry indicate that Mr. Gerth was telling you?

MR. NUSSBAUM: Do you want him to analyze what Mr. Gerth was thinking? I have trouble with that question. The entry says what he said. He is taking notes of a conversation with Gerth about what some third party is telling Gerth. I don't know what you want Mr. Lindsey to tell you.

BY MR. GIUFFRA:

Q What do these notes indicate to you that Gerth was telling you?

A Again, I don't know, at the time that one of the issues that has come up in all this was whether or not Whitewater paid a personal loan of the Clintons. And I believe that loan was, I hesitated because I believe that loan was a security-bonded

48

loan and this could be a reference to a Whitewater check that was written to the security bank on a loan that was a Clinton loan.

Now it turns out, to be clear, it turns out it was a loan the Clinton name was on but the proceeds went into Whitewater and that was used to finance so-called I think lot 13, which is where they built the model home, but I think that is the check that that refers to.

Q Then "200,000 loan to Bill"?

A $20,000.

Q $20,000, excuse me.

A "$20,000 loan to Bill Clinton personally." I don't know, I have never seen an allegation like that. I don't remember what that reference was to. I don't believe I have ever seen an allegation of that.

"$12.09, 10/31/85." I don't have any idea what that is.

Q Next entry?

A I can't -- "deposit, Madison Marketing," oh, again, there was a deposit in the Madison, from

49

Madison Marketing.
MR. NUSSBAUM: Just read the words.
THE WITNESS: "Deposit, Madison Marketing 11/8/85, $7500. Brought bank account up to $7512.49, $7322.42, balance 190.07, check 145."
BY MR. GIUFFRA:
Q What do these notations indicate?
A Again --
MR. NUSSBAUM: That is what he was telling him.
BY MR. GIUFFRA:
Q Were these transactions involving Whitewater's checking account?
A I think he was telling me that Madison Marketing deposited $7500 into Whitewater. If you look at the dates, it's the same date that Whitewater wrote a check for $7322.42 to the Security Bank of Paragould, that without the Madison Marketing deposit, that that would have created an overdraft situation in the Whitewater account. It goes back to probably that Madison Marketing advancing money to Whitewater.

50

Q Okay. The next entry?
A "Sued and got a default judgment against Susan McDougal." I believe --
MR. NUSSBAUM: He didn't ask you that.
THE WITNESS: Okay.
BY MR. GIUFFRA:
Q What does that indicate to you?
MR. NUSSBAUM: You know, my objection to this is that essentially what you are getting here, and I don't know that you are entitled to this, is you are not just getting Mr. Lindsey to read this. He is giving a primer on this whole issue, which I'm not sure you are entitled to, but I can't seem to get Mr. Lindsey to understand you are not entitled to it.
MR. GIUFFRA: I could ask him those questions, too.
MR. NUSSBAUM: I guess you can. Mr. Lindsey is required to tell you what his notes say. But I think this goes well beyond, so I would instruct the witness to read what the notes say and tell Mr. Giuffra what the notes say. And not to --

51

THE WITNESS: Can we go off the record?
MR. GIUFFRA: Sure.
(Discussion off the record.)
THE WITNESS: Let me say once, I don't remember the conversation with Jeff Gerth any more than is reflected, I don't know, other than these notes. This is my only, I cannot tell you today seeing these notes that it recalls the conversation with Jeff Gerth. So, you know, again, when you asked me, whether you ask me or on that question, the last question or the first question, what does that mean, I'm telling you based upon having read about this for three years what I now know -- "know" is not the right word -- that I now understand these had references to.
But if you ask me, as Neal suggests, whether or not Jeff Gerth said any of this to me or I understood any of this at the time, I don't know the answer to that. This has been going on for three years, I read about it every day for three years. What I now understand something means and what I understood it meant in September of 1993 are entirely

52

different, and if I have left the impression when I'm trying to explain it that Jeff Gerth explained it to me in those terms, I can't testify to that, because I don't know that to be a fact. I don't remember what Jeff Gerth said. I remember I have notes of my conversation with him, but beyond the notes I'm blind.
BY MR. GIUFFRA:
Q Let's try to read the notes into the record, give us your best understanding based on your note-taking ability what you think the notes refer to.
A Based upon what I know now?
Q Based upon what you knew at the time, and then, if you can do that.
A I cannot do that.
Q Okay. Well, why don't you read the notes in, then I will ask the questions based on, obviously since you can't separate out what he told you and what you know now, I will operate from the assumption it's based on what you know now.
A Okay. All right. "Sued and got a default

53

judgment against Susan McDougal. Attempt to increase equity in 1988, indictment reported, some assets to SBA that was" -- "some asset to SBA that was a 'temporary asset' misrepresentation."

Q As you sit here today, do you have any understanding what these notes have been referring to?

A Yes, David Hale was indicted in 1988, or excuse me, indicted in 1993. I don't remember that it was in 1988 but that he parked some assets that were not his, that he borrowed, quote unquote, from another account that a friend of his managed, into his account for the purposes of making representations to the SBA about what, how much equity he had in Capital Management.

Once they got approval from the SBA, my understanding is that they then moved the assets back into the original account of the person and that was what he was indicted for in 1993.

Q The entry above that, "Susan got"?

A "Sued and got."

Q "Got a default judgment on Susan

54

McDougal." As you sit here today, what do you think that was referring to?

A I think at some point, I don't know. I have some vague memory that they sued Madison Marketing or Master Marketing over, over the loan and got a default judgment, but that it's uncollectable. I have some memory, some vague recollection that that occurred, but I don't know that for a fact.

(Recess.)

THE WITNESS: Going on, still on page 8. "Two months later, University Mall, bumped into BC. Have you heard what that fucking whore Susan has done with the money? DH: I don't know what he is talking about. BC: You should talk to Jim."

BY MR. GIUFFRA:

Q What do you think this was referring to?

A I think Jeff Gerth was reporting that David Hale said he bumped into Bill Clinton at the University Mall; that he says Bill Clinton said have you heard; that Hale said I don't know what he, meaning Bill Clinton, is talking about; and that Bill Clinton said that he, David Hale, should talk to Jim

55

H. McDougal.
Q As you sit here today, with all the caveats that your counsel has placed into the record, what do you think this was referring to?
A I don't have any idea.
Q This is the so-called third conversation?
A This is the third conversation. I have no idea. As I sit here today, I can't think of anything that it could relate to. What she did with the money.
Q The sentence beginning "have you heard what," that is supposed to be Clinton?
A Yes, I think so.
Q And DH is Hale and talking to Clinton?
A Right.
MR. NUSSBAUM: This is all Gerth saying what Hale said.
MR. GIUFFRA: I understand that. The caveat is noted for the record.
THE WITNESS: "McD, summer 1986, new statement of purpose, McDougal wanted to exchange new statement, talked about real estate projects,

56

Flowerwood projects and one other project."
I don't know what that means today. I believe he said that McDougal, I think David Hale was saying McDougal came to him in the summer of '86, wanted to put a new statement of purpose in that would have Madison Marketing do certain things other than advertising and marketing, and included something with respect to real estate projects. "David Hale said he didn't exchange. July, 21" --
Q What does that mean?
A I assume he didn't exchange the two statement of purposes in the loan documents.
Q Okay.
A "July 21, 1993, FBI seized his records, did not get this, records not at his office." I assume, I think he is saying that they didn't get this new statement of purpose because it wasn't at his office, so the FBI didn't get it. "Picked up Master Marketing file, but new statement of purpose not in file."
Again, what I just said, the FBI picked up the Master Marketing file, but the new statement of

57

purpose was not in the file.
"Nothing due for one year, letter from Susan McDougal, cannot pay. Lag in collections, puts lie to real estate statement."
Q What does that mean, what is he referring to there?
A Again, I think he was referring to that the loan wasn't due to a year, at some point he got a letter from Susan saying she couldn't pay. "Lag in collections" meaning, I assume, advertising, marketing collections. "Puts lie to real estate statement" is probably --
MR. NUSSBAUM: "Probably" and "assume" when you are saying them to yourself, Mr. Lindsey, they are warnings to yourself.
BY MR. GIUFFRA:
Q As you sit here today, what do you think it refers to?
A I think it was saying she couldn't be in real estate projects because you wouldn't have a lag in collection so you could, I guess but I think that is what Hale was saying.

58

Q Next one?
A "Jim, Susan pledged their share in Madison." I think he told me that because they couldn't pay when the loan was due, they pledged shares of Madison to the loan.
"Note from Jim McDougal, Clinton will help out, page clipped to pledge document, FBI seized." I think he told me that McDougal wrote a note that said Clinton would help out, attached to the pledge of the Madison stock and that the FBI had that.
"No documents related to Clinton in DH's possession."
Q Let's go back. It was your understanding from Gerth that there was a document that McDougal had provided to Hale referencing Bill Clinton that had been seized by the FBI?
A That is my understanding.
"No documents related to Clinton in David Hale's possession." I think he was telling me that Hale had no documents that referenced or related to Clinton.
"BC, HRC sold back their interest in

59

Whitewater to McDougal for $1000, Little Rock law office, Vince Foster represented. McDougal asked for corporate track records. Foster was apologetic."

Q What does this entry, "BC, HRC sold back their interest in Whitewater" -- that makes sense, that is the selling back of the interest in the recent period?

A December of '90.

Q December of '90. Then it says something law office?

A "Little Rock law office."

Q Okay. I understand.

A "Vince Foster represented. McDougal asked for corporate tax records."

Q This is at the time of the sale?

A Right.

Q Okay.

A "Foster apologetic. Jim Blair became involved through a telephone call. 90 days tax records would be produced. Didn't believe that that has happened. June, July, 1993, McDougal called Foster concerning records, left some kind of message,

60

subsequent letter was sent to Sam Heuer, three years of tax returns, date on tax returns after call and transmittal letter. Do not believe the returns were filed."

Q What is the notation to the left?

A I can't read it.

Q Is this what Gerth is reporting to you or you are now reporting to Gerth?

A No, I think this is Gerth reporting to me. I didn't report to Gerth at all in this conversation. I simply listened and took notes.

Q Do you have any understanding as to whether McDougal did try to call Foster?

A No.

Q Do you have any understanding as to whether any sort of letter was sent to Sam Heuer that is referenced in these notes?

A I think this is a letter that was sent with the tax returns, but that is what that refers to.

Q Sent by whom?

A Today, I think I know that by the accountant.

61

Q Redden. R-e-d-d-e-n?
A Yes, I think so.
Q Okay. So Ms. Redden sent a letter in 1993 to Heuer, who was McDougal's lawyer?
A Enclosing three years of tax returns. Okay.
"No corporation records ever produced. 1987, '89 HRC," then looks like "filed '90 to '92. Where are the records of Whitewater. What has" -- I don't know what the rest of that is.
Q Let me ask a question on McDougal. Vince Foster never indicated to you that McDougal had attempted to contact him?
A No.
Q Is it your understanding that from just looking at the notes, according to Gerth that the McDougal call was sometime in June, July '93?
A I'm sorry.
Q That the McDougal call to Foster, according to Gerth, was sometime in June, July '93?
A Again --
Q Is that what the notes indicate?

62

A I don't know. I have June, July '93, McDougal called Foster, but I don't know how they relate to each other.
Q Okay. Okay. The next, you talked about that. What has, do you think there are some words missing at the top of page 11?
A I don't know. "Where are the records of Whitewater. What has." I may have quit writing. He may have gone on to the next question at that point. I don't know.
Q Okay.
A "At one time" --
MR. NUSSBAUM: Do you know what you would have written if you had continued writing? Go ahead.
THE WITNESS: "At one time box of documents in Rose Law Firm year and a half ago."
BY MR. GIUFFRA:
Q Is that a response or more?
A No, I think, no, no, none of these are responses. I think these are Jeff Gerth talking. "Vince Foster had done some work for Jim McDougal

earlier, somehow," I don't know what that word is. "If you believe DH, and we do" -- that was Gerth -- "was a loan to Madison Marketing ever repaid. Requested backup. Any possible connection between Whitewater and Madison Guaranty. Where money from Whitewater came from. Loan from Madison Guaranty to an entity, to Whitewater."

I don't know what the rest of this is. "Whitewater, $300,000 bank loans, $68,000, Clinton, to," and then a line, "000, McDougal."

Q What does this indicate to you?

A I have no idea. I think he is arguing with me about the numbers that we indicated at the time that the President had invested and the number that McDougal had invested. I think this was some sort of discussion that he didn't believe those numbers, because in his calculations or mine, he had come up with other numbers.

Q Okay.

A "Like to see corporate records. Whatever financial records there are pertaining to Whitewater, including documents used by Jim Lyons in making their

recommendations" -- "reconstruction," excuse me. "What does the President remember about David Hale?" Vince Foster, what happened to records, why weren't they turned over to McDougal? Jim Blair?" That is it.

Q These were notations to yourself to take some action after --

A No.

Q Okay.

A Those were Jeff Gerth's questions.

Q Okay.

MR. KRAVITZ: You are referring to the notes on page 10 and 11?

THE WITNESS: Yes. After Mr. Gerth related his story to me, he then wanted us to provide him documents, records, information, and I wrote down what he wanted.

BY MR. GIUFFRA:

Q Did you ever ascertain whether the loan to Master Marketing was ever repaid?

A What loan to Master?

Q Madison Marketing.

A What loan?
Q I'm reading the notes. Says it was the loan -- "was the loan to Madison Marketing ever repaid?" Page 11.
A Well, sitting here today, I can't tell you what loan we are talking about. Again, if you go back, there is a reference to $7500. There is also a reference, also obviously a $300,000 loan. I can't tell you today -- I can tell you today I don't believe that the $300,000 loan from Capital Management to Madison Marketing was ever repaid. In fact, I think I said they sued and got a default judgment. You might look at this document that you showed me earlier from Jim Lyons to determine whether the $7500 ever went back.
(Discussion off the record.)
THE WITNESS: I can't tell from this, there is a reference to a $25,000 payment to McDougal with some reference that that was distributed by McDougal to various entities. And then there is a note F, that suggests some sort of adjustment, but I can't tell from that whether it was, whether that $7500 was

repaid or not.
BY MR. GIUFFRA:
Q Then the reference on page 12, "Vince Foster, what happened to records, why weren't they turned over to McDougal?"
MR. NUSSBAUM: Could I raise something else? I haven't previously made this objection. I'm been trying desperately not to make any. We produced this document yesterday. You wanted him to go through it to tell you what he said. He has now done that.
As I look through the section of the resolution that we are supposed to be here talking about today, it's not clear to me which of these letters A through E this all fits under. We are supposed to be here, I thought, talking about Resolution Trust Corporation and various subsets of issues relating to that. And we are talking about anything but.
MR. GIUFFRA: Well, the reason I'm asking about these issues, I can show you how they do relate to (b)(2). The issue in (b)(2) is what information

67

the White House had, one of the issues is what information they had that was contained in the criminal referral.

To the extent information the White House had was from what reporters told them as to opposed to what was learned from the RTC, I think that is relevant. In fact, Mr. Lindsey's testimony in 1994, I believe he said that his knowledge of these matters was originally from the press accounts.

MR. NUSSBAUM: Well, of course, I trust that you would not believe there is anything improper or illegal about having a reporter tell you what he or she has learned.

MR. GIUFFRA: Absolutely not.

MR. NUSSBAUM: What I thought this was about was whether the White House learned improperly that it wasn't supposed to know from a government agency that was doing an investigation. You haven't asked about that. I don't know, perhaps you can tell me which one of these A through E this line of questioning now fits in.

I thought it would be helpful to you to

68

know what Mr. Lindsey's notes said. He gave you a primer on the whole issue now, for no charge. But it seems to me now that you are beyond the scope of what we are prepared for.

MR. GIUFFRA: The question I'm asking right now, what happened to the records, Vince Foster, why weren't they turned over to McDougal, I can easily fit within (b)(1), which is the Vince Foster document-handling issue.

MR. NUSSBAUM: That came and went.

MR. GIUFFRA: No, it didn't because I can take the position, and I will, that we didn't get this document until now and I think the document arguably was called for back in -- last summer. Now the document may have been in Mr. Lindsey's personal possession as opposed to White House possession, which presents a whole different issue but the committee has not closed off any discussion about the document-handling issue.

MR. NUSSBAUM: I will tell you now if you are going to use that document to ask questions about (b)(1), I'm going to instruct him not to answer. If

69

you want to play that game, we can do that. We are here to talk about (b)(2) A through E.

If you think getting that document yesterday allows you to go back into issues that you went through in (b)(1), I'm going to instruct him not to answer. It's as simple as that. Decide how you want to use your time.

MR. GIUFFRA: I have no intention of going back into (b)(1) in any kind of --

MR. NUSSBAUM: You just said you did.

MR. GIUFFRA: All I want to know is, okay, this is notation, "Vince Foster, what happened to records, why weren't they turned over to McDougal." It raises the question, well, did Vince Foster have certain documents in his office relating to Whitewater that either they were supposed to be turned over to McDougal or they have disappeared?

Okay. If you want to tell Mr. Lindsey not to answer that question, I think from the standpoint of Mr. Lindsey, the White House, that is not a very useful thing to do.

MR. IVEY: Are we on the record?

70

MR. GIUFFRA: Yes. I want to ask him one or two questions and go on.

MR. NUSSBAUM: You asked him to read the notes and he did. He went a step further and asked what they mean to him. He did it. Those notes take in a whole lot more territory than what we understood we were here for today. I let you do it. If you are now going to use those notes as a jumping-off point to have a general discussion about anything you think has to do with Whitewater as opposed to RTC, it's not going to happen. It's going to stop.

MR. GIUFFRA: I have no intention of doing that.

MR. NUSSBAUM: That is what we are doing now.

MR. GIUFFRA: No, I'm asking about Vince Foster, what happened to records, why weren't they turned over to McDougal. That is the only thing I'm asking about right now. That is the pending question.

MR. NUSSBAUM: The pending question comes under (b)(1), which we are not here for. We have

71

already testified both here and before the Senate on (b)(1). We are here for (b)(2), A through E.

MR. GIUFFRA: Can we go off the record?

(Discussion off the record.)

BY MR. GIUFFRA:

Q With reference to "Vince Foster," arrow, "what happened to records," does that refer to Whitewater records, or does that refer to the tax records?

A That refers to the corporate Whitewater records that were requested in December of 1992.

Q Then why weren't they turned over to McDougal, that indicates that Vince Foster had the corporate records in his possession and was supposed to turn them over?

A No, I don't believe --

MR. NUSSBAUM: Wait, I object. What indicates? This is Gerth talking about what somebody tells. Indicates from whom or to whom? I don't know what that means.

MR. KRAVITZ: Aren't these questions Gerth asked Mr. Lindsey?

72

THE WITNESS: Yes. Mr. Foster was at a closing in December of 1992 in which McDougal asked for the corporate records of Whitewater. Mr. Gerth's understanding was Mr. McDougal had not received those documents and was asking me if I knew what happened to them and why they weren't turned over to McDougal.

I don't know what happened to them. I don't know why they weren't turned over to McDougal. I certainly don't know whether they were in Vince Foster's office. I know I have no idea what was in Vince Foster's office.

BY MR. GIUFFRA:

Q And you never took any steps to try to answer this question?

A No. Well, no.

Q Well, do you want to modify the answer of no?

MR. NUSSBAUM: He said "well."

BY MR. GIUFFRA:

Q So your answer is no?

A Well, no. Apparently, on 9/20, at 2:30 I

73

spoke with Jim Blair, based on this other note, and I wrote down "corporate records, demand."

Q We will go through those notes next.

A Well, okay. But again, okay.

MR. KRAVITZ: Where were you reading from?

THE WITNESS: The second to the last page.

BY MR. GIUFFRA:

Q Immediately above the Vince Foster notation it says "what does the President remember about David Hale." Following your conversation with Mr. Gerth, did you ask the President what he remembered about David Hale?

MR. NUSSBAUM: Let me object on a number of grounds, one of which is if you had this conversation with the President in the role of an attorney to the President, then I don't believe Mr. Lindsey can answer that question; the conversation is privileged.

Second, as I suspected, it wasn't just one question you wanted to ask. If you are now going to take him through this to find out what he did on this, it's beyond the scope of this deposition. He

74

is not going to talk about it. We are here to talk about (b)(2), A through E, that is what you told me. I can play your voice mail back. I was smart enough to save it. We can dial into my voice mail; you can hear your own voice telling me what this is about. That is what we are here for. Please restrict your requests to that.

(Recess.)

BY MR. GIUFFRA:

Q Mr. Lindsey, following your meeting with Mr. Gerth, did you ask the President what he remembered about David Hale?

A Not in that fashion. I asked him whether or not he had any conversation with David Hale about this loan that David Hale was claiming that he encouraged David Hale to make to the McDougals and he said he had not.

Q Did he say anything further about this allegation of the conversation with McDougal and Hale?

A McDougal and Hale? No. He said he did not believe he had any conversation with David Hale

75

related to any of that.
Q Did the President say he remembered anything about David Hale?
A I didn't ask him.
Q Did you take any other steps to find out more about David Hale?
A Well, yes. About David Hale?
Q Yes.
A At some point, the issue came up whether or not Bill Clinton had appointed David Hale to the municipal judgeship and Clinton couldn't remember, so I tried to figure out, find out whether or not the President, whether or not the President had appointed David Hale, and the answer is -- ultimately the answer is no, he did not. Frank White appointed David Hale to the municipal judgeship.
Q Did the President indicate to you that he knew who David Hale was?
A Oh, yes. Again, to the same extent I knew who David Hale was and is. But again, you say did he indicate that to me. That wasn't a question. I asked him, so he didn't indicate, he knew who David

76

Hale was.
Q Let me show you BL 11270. Is this a document you created?
A I think my secretary did.
Q This reflects what, this document?
A My trying to find out who appointed David Hale. David Hale was a municipal judge. The Supreme Court threw out our municipal court system. I can't remember, I don't know, I don't remember why but they threw out our municipal court system. The Arkansas legislature reenacted it, constitutionally, and at some point somebody appointed David Hale to this seat he used to have, and that he then would run for again, and the question was who had appointed him.
Betsy's thought was, based on that note, was that perhaps Clinton had appointed him. Further research found out and indicated that Bill Clinton had not, that Frank White had. So, but there were a lot of stories in the paper about David Hale who Bill Clinton had appointed to a judgeship was indicted and I was trying to find out if in fact that was true.
I asked the President. The President

77

indicated he had no, he didn't know, he didn't remember whether he had or hadn't, so I did some research to try to, I asked several people to find out if they could figure out what had happened.

Q Did you ever speak to Mr. Hubbell about David Hale?

A Not that I'm aware of.

Q Did you -- strike that.

Okay. Following your conversation or meeting with Mr. Gerth, did you then contact Jim Blair?

A Must have. I don't remember it but there is a note that reflects I did.

Q Let's go through the Jim Blair notes.

A Okay.

Q They are shorter than the other ones, fortunately for all of us.

A "Jim Blair. McDougal called Heuer to tell him Hale had been to see him. McDougal told Heuer that Hale had 'tried to get him to fabricate story about BC and JGT.'"

Q What does this indicate? This is BL 11730,

78

BL 11731.

A Again, I don't know much more than what it says. Jim Blair told me that McDougal had called Sam Heuer, who is McDougal's lawyer, to tell him, Heuer, that Hale had been to see him, McDougal. McDougal told Heuer that Hale had tried to get him to fabricate a story about Bill Clinton and Jim Guy Tucker. Okay, then the next note --

Q Hale tried to get McDougal to fabricate the story?

A Right. "Him" being McDougal. "Gerth tried to get Sam Heuer to tell him," Gerth, "where McDougal was. Heuer wouldn't. Heuer asked Brent Bumpers whether indictment," then I have "against Hale, not McDougal."

Q Okay, let's stop for a second. Who is Brent Bumpers?

A Brent Bumpers is an assistant U.S. Attorney.

Q In the eastern district of Arkansas?

A Correct, in Little Rock.

Q He is the son of Dale Bumpers?

79

A Correct.
Q Since January 20, 1993, have you spoken to Brent Bumpers? Do you know Brent Bumpers?
A Yes, I know Brent Bumpers. About anything of substance, no, whether or not I have passed him and seen him and said hello, I have not had a substantive conversation with Brent Bumpers.
Q Has Brent Bumpers called your office?
A Not that I'm aware of. "Agreement: We would prepare, McDougal would file" --
Q Wait a minute. This indicates that Heuer, who was McDougal's lawyer, had asked Brent Bumpers, who works in the eastern district of Arkansas U.S. Attorney's office, whether an indictment was pending against Hale but not McDougal?
A Again, I don't remember the conversation. There are dashes. Whether indictment, dash against Hale, not McDougal, whether you can run that together and say whether there is indictment against Hale and not McDougal, I cannot say. I don't remember what Jim Blair told me. All I have is a note. Okay.
Q Since January 20, 1993, do you have any

80

understanding as to whether Brent Bumpers has spoken with any member of the White House staff with regard to anything having to do with McDougal, Hale, Whitewater, Madison?
A Not that I'm aware of.
Q Who is Marsha Scott?
A Marsha Scott is a deputy assistant to the President.
Q Do you know whether or not Marsha Scott knows Brent Bumpers?
A I do not know that.
Q Have you ever spoken to -- strike that.
Since January 20, 1993, have you ever spoken to Marsha Scott about matters relating to Whitewater or Madison?
MR. NUSSBAUM: Can I object again. I don't want to reraise this whole issue. You asked the line of questions that you have said you were going to ask. Mr. Lindsey answered them. Could you at least -- I'm sure there is some connection between this, Marsha Scott and Whitewater Madison and the RTC stuff but it's not apparent to me.

81

Would you help me out here.
MR. GIUFFRA: Why doesn't he just answer my first general question.
MR. NUSSBAUM: That is my objection.
MR. GIUFFRA: I think the question as posed is, falls within (b)(2), evidence before the committee, which I don't want to get into right now with Mr. Lindsey, establishes that it's relevant.
MR. NUSSBAUM: You see, I could take your word for that all day, but the problem is I don't know what you are thinking, I don't want to slow this down.
MR. GIUFFRA: This may be the problem with trying to be accommodating and giving you a sense of what we would and wouldn't be dealing with. That is why I phrased the question in terms of since January 20, 1993, talking about since he became a White House employee and she was at the White House.
MR. NUSSBAUM: Are you representing to me there is some connection between this question and what answer he might give?
MR. GIUFFRA: Yes.

82

MR. NUSSBAUM: And the matters involving the Resolution Trust Corporation that are the subject of section 2A through E of the resolution?
MR. GIUFFRA: Absolutely.
MR. IVEY: You could reference the questions to the criminal referrals, reference it to Hale, reference it to CNS, the U.S. Attorney.
MR. GIUFFRA: I will reference it to the criminal referral matter.
MR. KRAVITZ: Repeat the question.
BY MR. GIUFFRA:
Q Since January 20, 1993, have you discussed Whitewater/Madison with Marsha Scott?
A That is so broad.
MR. IVEY: That's the same question.
MR. GIUFFRA: Let's go off the record.
(Discussion off the record.)
MR. KRAVITZ: I don't know what the pending question is.
BY MR. GIUFFRA:
Q Since January 20, 1993, have you discussed matters relating to Whitewater/Madison with Marsha

83

Scott?
A I think the answer is, the substance of it, no. I mean, Marsha Scott is a friend of mine. Obviously we talk a lot about my situation and what I have gone through for the last two years. So that could be discussing Whitewater/Madison, though I don't believe so.
But if you are asking me whether or not we have had substantive conversations about the underlying facts of it, not the political implications, the toll on people in Arkansas, all the sort of human aspects of Whitewater, I think the answer is no. At least I don't recall a substantive conversation about the underlying merits of the matter.
Q Do you recall any conversations about anything having to do with RTC criminal referrals, David Hale, let's do RTC criminal referrals?
A I don't believe so. Again, other than just in general about the stories in the paper, and the effect it's having on people and the effect it's having on me. Other than those sorts of

84

conversations, if you are asking me did we sit down and talk about who did what when, where, I don't believe so.
But again, I have had a lot of conversations with Marsha over the last three years, and I certainly wouldn't testify to you that I have never discussed with her Whitewater or Madison.
Q Has Marsha Scott ever communicated to you information she gathered from some other source relating to Madison/Whitewater?
A I don't believe so. Let me say that with the caveat, I'm saying I don't remember. If you then said well, did she say X to you, there might be, it might trigger a memory but my general memory is no.
Q Do you have any understanding as to whether Ms. Scott is acquainted with any person who is employed by the U.S. Attorney's office for the eastern district of Arkansas?
MR. KRAVITZ: At what time?
BY MR. GIUFFRA:
Q During 1993.
A If she is acquainted with anyone? I think

85

people I know, well, no, I don't know. The only people I know that work there are Brent Bumpers, Paula Casey and Fletcher Jackson. I don't know that she knows any of those three.

Q How do you know Fletcher Jackson?

A Fletcher Jackson has been a long-time deputy assistant U.S. Attorney. I don't know Fletcher Jackson. As I said, I think I said if he walked in here, I wouldn't be able to recognize him but Fletcher Jackson is a name that has been around, involved in this and around the U.S. Attorney's office for a long time.

Q Let's go to the notes.

MR. KRAVITZ: Make it clear on the record what you are going back to.

BY MR. GIUFFRA:

Q BL 11730.

A "Agreement, we would prepare and McDougal would file. Corporate records demand, 1990, 1992 tax return, 60 days, 90 days."

Q What does this refer to?

A I think I was asking him back related to

86

whether or not there was an agreement that we would prepare the tax returns and he was telling me why. There was agreement that we would prepare them and that McDougal would file them.

The 1990, 1992, going back up, I think are the tax returns we are talking about. I think the 60 to the 90 days was the time frame they thought it would take to get that done. This is dated from December of '92.

Q The reference to "corporate records demand," what does that refer to?

A I'm speculating. I think he said that McDougal asked for the corporate records at that meeting, which is consistent with what Gerth had said. Then it says "second call" --

Q Just so I can make sure. This is a meeting that McDougal's lawyer had with Blair or McDougal had with Blair?

A It's neither.

Q Or is this the closing?

A This is the closing, where Blair was --

Q Where Foster was present?

87

A Foster was present because Blair couldn't get out of Fayetteville. "Second call" I don't know whether that means my second call to Blair or Blair calling me back. "Sam Heuer called Claudia Reilly, letter of transmittal" --

Q Who is Claudia Reilly?

A Claudia Reilly is the wife of a former lieutenant governor of Arkansas, Bob Reilly, who is a close personal friend of Jim McDougal. In fact he lived, the trailer he lives on may be on their property in Arkadelphia. After he was lieutenant governor he went back to teaching in Arkadelphia.

"Letter of transmittal from accountant dated two or three days before the returns are filed." "Returns prepared for McDougal to file, given to McDougal, doesn't know whether McDougal filed return."

I must tell you, on reflection, I think "before the returns are filed" is probably not correct. I think this is a reference to the letter on, the transmittal letter predates where the accountant signed, signs and dates the return, and

88

that goes back to, again, to a reference in Gerth's "tax return, date on tax return after call and transmittal letter."

So again, I was trying, I think, again, I probably said do you know anything about the date, being before the date, and I think he was telling me that the transmittal letter date is two or three days before the return date and that we prepared for McDougal to file. "Give it to McDougal. Doesn't know whether McDougal filed returns. Fletcher Jackson in charge of case, immunity leaked."

Q What does this refer to?

A I don't remember. Again, I can speculate that Fletcher Jackson --

MR. NUSSBAUM: Don't speculate.

BY MR. GIUFFRA:

Q What would be your understanding of reading, from looking at your notes now?

A Again, looking at my notes, I don't know what he was saying to me.

Q You have absolutely no understanding as to what this may refer to?

89

A I can --
Q Why don't you speculate and you can say it's speculation.
MR. NUSSBAUM: Don't speculate. You are responsible for what you say. I would advise the witness he is not here to speculate. He either knows or he doesn't.
THE WITNESS: I think I do know that Fletcher Jackson was handling the Hale case. I don't know if I knew it at the time. I have no idea what "immunity leaked" references. I do know now that Hale sought immunity and whether or not that was the -- Hale leaked the fact that he had sought and did not get immunity, could be a reference to that. But I frankly can't tell you that.
BY MR. GIUFFRA:
Q Did Mr. Blair indicate to you that he had spoken to Fletcher Jackson?
A No.
Q Do you know whether Mr. Heuer had spoken to Fletcher Jackson?
A No.

90

Q Do you know whether -- strike that.
Do you have any knowledge as to whether anybody in the Clinton administration spoke to Fletcher Jackson?
A I know of no one that spoke to Fletcher Jackson. "McDougal might become target." I think this is again Blair telling me. "Blair heard that $300,000 had been deposited in McDougal's account, jumped pretty high." I have no idea what "jumped pretty high" means. I don't know whether McDougal jumped pretty high or that Blair jumped pretty high.
Q Somebody was jumping?
A Somebody jumped pretty high.
Q I would like to take you through some documents we received from the White House, Bates number S 7764, dated April 29, 1993.
A Okay.
Q Do you have any recollection as to what that might be about?
A No.
Q It's a call from Mr. Altman?
A Yes.

91

Q Just so the record is clear, the reason I'm asking these questions, these records I don't believe were available to the committee back in 1994.
A That is interesting.
Q It says "call Roger Altman, received message yesterday, anxious to speak to you today."
THE WITNESS: Do we know who --
MR. NUSSBAUM: There is no question pending.
MR. KRAVITZ: I don't know what "S" means. Do you know what "S" means? The prefix?
MR. GIUFFRA: The "S" means Senate. That is just a Bates number.
THE WITNESS: One of your Bates numbers.
MR. GIUFFRA: It's a White House Bates number.
(Discussion off the record.)
BY MR. GIUFFRA:
Q Do you know a man named John Flake?
A Yes.
Q Who is John Flake?
A A real estate developer, businessman, in

92

Little Rock.
Q Is he someone who is a friend of yours?
A Yes and no. John Flake and I were in Cub Scouts together. His mother was our den mother. He and I are the same age and we went through school together. So in that sense, John Flake and I have been and are friends. I do not see John Flake either socially or have any business connections with him.
Q There are a number of phone calls in your call list that has been produced to the committee, calls with Mr. Flake. Do you have any recollection as to what those calls might have been about?
A I believe it had to do with an appointment to some federal board. But I can't tell you which board he was interested in being appointed to.
Q Have you ever heard of an investment called Campobello Island that Mr. McDougal put together?
A Absolutely. Also heard about it from Roosevelt.
Q Were you aware Mr. Flake was an investor in Campobello?
A I don't believe so.

93

Q He never told you he was an investor in that?
A I don't believe so.
Q Do you have any understanding as to whether or not Mr. Flake was referenced -- strike that.
Did you ever discuss any -- have you ever discussed anything having to do with Madison/Whitewater with Mr. Flake?
A I don't believe so. I believe the only conversation I have had, had to do with -- I can't remember what board it was, but his desire to be appointed to some board.
Q Do you have any understanding as to whether Mr. Flake is referenced in any RTC criminal referrals?
A No.
Q Relating to Madison?
A No.
Q Show you a document bears Bates number S 7771.
A Okay.
Q It's a call from Mr. Hubbell, 8:22 a.m.,

94

June 16, 1993. The message is "needs to give you a report on LD." What is the reference to LD?
A I don't know. LD is the first two initials of L.D. Brown.
Q Who is?
A Former state trooper in Arkansas, worked on the governor's security force.
Q Do you know whether Mr. Hubbell was preparing a report on L.D. Brown?
A No.
Q Do you have any idea what this could reference?
A No.
Q Have you ever discussed L.D. Brown with Mr. Hubbell?
A I may have. I couldn't recall ever having discussed L.D. Brown with him.
Q Do you have any understanding as to whether L.D. Brown has made any allegations relating to David Hale and President Clinton?
MR. NUSSBAUM: Objection. Again, I can't -- maybe I'm missing something. I don't know,

95

you are going to tell me this relates somehow.
MR. GIUFFRA: This definitely does.
MR. NUSSBAUM: As opposed to the others that indefinitely did.
MR. GIUFFRA: The others clearly did as well. Let's go off the record a second.
(Discussion off the record.)
(The reporter read the record as requested.)
THE WITNESS: Yes.
BY MR. GIUFFRA:
Q What is your understanding of the allegations that L.D. Brown has made about President Clinton and David Hale?
A At some point, L.D. Brown has said that he was with Governor Clinton at the time that one of these three conversations that David Hale says occurred occurred.
Q And what exactly is the allegation that L.D. Brown makes that he overheard in the conversation?
A Overheard, I'm not even sure he claims that. I think he just claims he heard them talking.

96

Q And it would be your testimony that this communication with Mr. Hubbell may relate to L.D. Brown in some way?
A Again, I don't know what "LD" relates to. I do not believe a communication about L.D. Brown in June of 1993 could have related to that, because I didn't learn of any of this about Hale until September and I don't think I learned that L.D. Brown was saying anything until an American Spectator article maybe six to eight months later.
So again, I have no idea what that refers to. But I do not believe it refers to that.
Q Who is Mark Middleton?
A Mark Middleton was an assistant, I think, primarily to Mack McLarty in the White House. He is no longer with the White House.
Q Do you recall speaking to Web Hubbell on the day that Mr. Hale was indicted, September 23, 1993?
A No.
Q Let me show you a document. One bears S 7782, the other bears Bates number SWC 532. The

97

first is a Bruce Lindsey call list indicating that Mr. Hubbell attempted to contact you at, looks like 10:17, and then another call back from you to Judge Hubbell. You have no recollection of speaking to Web Hubbell about David Hale?

A I don't think so. If we spoke, we could have spoken about it in passing but I don't think I have ever had a substantive conversation. I may have asked him if he read in the paper or had seen this story.

Q Who is John Emerson?

A John Emerson was an assistant to me in Presidential personnel. He is now an assistant in the intergovernmental relations section of the White House.

Q On September 27, 1993, what position did John Emerson hold?

A What date?

Q September 27, 1993?

A He was a deputy to me in Presidential personnel.

Q Do you know Jack Ryan?

98

A No. I have met him but I don't know him.

Q Have you ever spoken to Jack Ryan about anything having to do with RTC criminal referrals?

A No.

Q Do you know whether --

A I have spoken to him about anything referring to the RTC but clearly not the criminal referrals.

Q Did you ever instruct Mr. Emerson to speak to Mr. Ryan?

A Again, I don't have any idea.

Q Let me show you a document, S 7783.

A I don't believe so.

Q No recollection as to what that may refer to?

A Well, if it referred to, yes, if it referred to, this may never even -- if it referred to a personnel matter, then it might automatically, when the phone call was taken in, the person who took the phone call would have referred them to John Emerson or to my other deputy, simply because they tended to handle most of those calls.

99

So the way that is written, if it was to me, it wouldn't be written like that. That would suggest that the person who took it was reflecting that he called me, but they had referred it to John Emerson. During this whole time obviously, as you know, we had a vacancy at the RTC.

Q Now, Betsy Wright is someone who you know obviously?

A Yes.

Q Frequent caller. Have you spoken to Betsy Wright since January 20, 1993 about anything involving the substance of Whitewater matters?

A Yes.

Q Do you recall anything about the substance of those communications?

A Most of them related to the fund-raiser in 1986. Frankly, the only ones I can remember would have related to the fund-raiser in 1986.

Q Do you recall speaking with her trying to ascertain more information about the fund-raiser in 1986?

A Yes.

100

Q Do you recall what prompted you to speak with Ms. Wright about the fund-raiser in 1986?

A Yes. The entire issue that was raised at the September -- excuse me, October 14 meeting about the checks for $3000 each.

Q Do you know Beverly Bassett Schaffer?

A Yes.

Q What is the nature of your relationship with Beverly Bassett Schaffer?

A She was my law partner. She's also the wife of Archie Schaffer, who is a friend, acquaintance of mine. She's also the brother of Woody Bassett, who is a friend of mine.

Q Sister?

A Sister, I'm sorry, Woody Bassett is the brother.

Q In the fall of 1993, do you recall speaking with Ms. Schaffer about anything having to do with Whitewater/Madison?

A I don't remember speaking directly with her. I had a lot of conversations with Archie, her husband, with lawyers in my law firm, to try to

101

determine and put together a chronology of what she had done as the state securities commissioner with respect to the handling of Madison, and I know she was quite upset with the way Jeff Gerth had written some stories, because she thought she had cooperated with him and yet felt like the stories were slanted against her. So I don't know whether I spoke directly with her but I certainly spoke with others about that issue.

Q Do you have any understanding as to whether any reference was made to Ms. Schaffer in the RTC criminal referrals?

A No.

Q Ms. Schaffer has never indicated to you that she was referenced in the referrals?

A I don't think so.

Q Or never told you that she was?

A I don't think so.

Q I will show you two documents. S 7813, and 14. Any recollection about what those conversations might have been about?

A Well, I guess I would have to see the New

102

York Times article, but no. If the New York Times article was the Jeff Gerth article that I have been talking about, where she was quite upset about the way she was portrayed, it could relate to that. But again, just as a date, December 15 doesn't mean anything to me.

MR. KRAVITZ: For the record, I believe the question was does Mr. Lindsey have any recollection of what these conversations were about. These don't indicate conversations these indicate messages.

THE WITNESS: Right. I don't remember. Again, she was upset. I don't know whether I spoke to her about her being upset or whether or not I learned how upset she was from others.

BY MR. GIUFFRA:

Q Do you know whether December 15 was the article about her in the New York Times?

MR. NUSSBAUM: You have answered his question.

THE WITNESS: I was wondering whether he knew the answer before he asked it.

BY MR. GIUFFRA:

103

Q Who is Chuck Babcock?
A A reporter for The Washington Post.
Q And Ken Peacock?
A Ken Peacock was one of the, I think he was one of the contributors on the, on the four checks. Either Ken or his son, I don't remember which. Ken Peacock I think is the source of the funds.
Q I would like to show you a document, bears Bates numbers S 11384 through S 11388, also bears Bates number BL 11298, 11302. It is a facsimile dated November 16, 1993 from the SBA, Small Business Administration, John Spotilia to Neil Eggleston. Have you ever seen that document before?
A Yes.
Q Under what circumstances did you see this document previously?
A I think Neil gave it to me.
Q Do you know how Mr. Eggleston obtained a copy of this document?
A There's a fax sheet here from the SBA, but I don't know that.
Q Do you know Mr. Spotilia?

104

A I don't believe so.
Q Did you ask Mr. Eggleston to obtain that document?
A I don't think so. I might have, but I don't remember.
Q Do you know why Mr. Eggleston obtained a copy of the document?
A Well, there was all sorts of stories in the paper around this time that the SBA was making a report to the banking, small business committee, excuse me, on Capital. If I saw that they were doing that, I might have asked could we get a copy of it. He may have just gotten a copy and gave it to me. I don't know which one of those happened.
Q You didn't make any phone calls to obtain a copy of this document?
A Again, I may have called Neil.
Q Anyone outside of the White House?
A I don't think so.
Q So you wouldn't have spoken to Mr. Bowles about this document?
A No.

105

Q And not Mr. Spotilia, because you testified you don't know him?
A I may have spoken to him on the phone, but I don't know him. I don't believe I spoke to anybody outside the White House about this.
Q But your testimony would be there is some possibility you may have asked Mr. Eggleston to obtain these documents?
A If I saw a press story that says that the Small Business Administration was issuing a report to the committee, I might have asked him for a copy of the report, yes.
Q Do you have any knowledge as to whether this report was subsequently returned to the SBA?
MR. KRAVITZ: You mean the report Mr. Lindsey got the copy of?
MR. GIUFFRA: Yes, the one you received.
THE WITNESS: Obviously it wasn't, because it was in my file.
MR. KRAVITZ: I think he is probably referring to another copy of it, but the question is unclear. Bob, are you referring to the specific copy

106

that Mr. Lindsey got?
BY MR. GIUFFRA:
Q Let me restate the question. Do you recall seeing this document?
A Yes. Well, "recall" is a strange word. I don't recall the document. I have notes that reflect that there is a reference in here, I guess, I can't find it, to other documents. I have seen a note that I asked whether we had a copy of those other documents, and I was told we didn't. So obviously I saw this document, but whether, I don't recall today the date I saw it or what my reaction to it was when I saw it, but obviously I saw it because I made inquiry about additional documents.
Q Do you recall whether there were any exhibits attached to this document?
A No, there were not. That is what I was asking about. There is a reference somewhere in here, I don't know where, I must have read it, to exhibits, and I asked whether or not we had a copy of the exhibits and was told we did not.
MR. GIUFFRA: Go off the record a second.

107

(Discussion off the record.)
BY MR. GIUFFRA:
Q I will show you a document bearing Bates number S 11399.
A That is the document I was referring to, yes.
Q Was this something you typed up, this document bearing Bates number S 11399, or your secretary?
A I assume Deb Coyle typed it up.
Q What does this document indicate that you were asking?
A It's self-evident. You know, it says "Neil Eggleston and the additional information is at SBA, is approximately a foot high. He has a call in to SBA to find out if it contains reference to either the President or Hillary. He can have a copy of the document if it appears necessary, but doesn't believe it's problematic."
Q Do you recall asking, do you recall asking Mr. Eggleston about the additional material?
A No.

108

Q No recollection?
A No, again, no. I obviously did, but I don't recall it.
Q Okay. Do you recall asking him to contact the SBA to obtain the additional documents?
A I doubt if I did that. I would probably have simply said there is a reference to additional documents, do we have them? But again I don't know what I said. I wouldn't have assumed at first that we didn't already have them.
Q Do you recall any discussions with Mr. Nussbaum about obtaining these documents?
A No.
Q Do you recall any discussion with anyone at the White House about obtaining these documents?
A No.
Q Do you recall any discussion with anyone at the White House about whether there were documents that were exhibits to that SBA document that I showed you previously that referenced -- strike that.
Do you recall discussing with anyone at the White House whether President or Mrs. Clinton were

referenced in any SBA criminal referral materials?
A Again, can I see the letter from the SBA? I do not recall the conversation. This letter at page 3 says, "as additional background, I'm attaching further information relating to Capital Management." My guess is that I asked Neil or asked Deb Coyle to ask Neil did we have the additional information, and was there any reference to the Clintons in it. And I believe I got that response to that request.
Now, you asked me about criminal referrals. I have no idea whether those documents had anything to do with criminal referrals, so the answer to that is I have no way of knowing. I asked whether the Clintons -- if anything, I probably asked whether there was anything about the Clintons in the additional information that they provided to the committee and was told, I guess I wasn't even told that. I was told there is nothing problematic.
Q Do you know whether Eggleston ever obtained the additional information from the SBA?
A I do not.
Q Do you have any knowledge as to whether the

SBA or the Department of Justice ever asked -- strike that.
Do you have any knowledge -- do you want to amend your answer?
A No.
Q Do you have any understanding as to whether anyone from the SBA made a request to Mr. Eggleston for the return of this additional information?
A Beyond what my attorney has told me, no.
Q Were you ever interviewed by the FBI with regard to this issue of the transfer of the additional information to the White House?
A I don't think so.
Q Let me show you another document, BL 11738, S 11398.
A Okay.
Q What is that document?
A Those are questions that were asked me after a meeting I had with several Washington Post reporters.
Q Again, your testimony with regard to the attachments to that SBA document, you have never seen

111

those?
A No.
Q And you don't have any knowledge as to whether anybody at the White House ever saw those documents?
A No.
Q Do you recall approximately when these notes bearing Bates number S 11398 would have been prepared?
A Yes.
Q When was that?
A Early October, 1993, maybe October 9th, maybe. Around the first part of October.
Q What was the context in which you met of these reporters?
A They wanted, well, Chuck Babcock, et al., had wanted from the beginning more information, more documentation, on Whitewater. I think after the David Hale matter, that renewed their interest and they came back and sought additional information, had additional questions.
Q Were you present -- when did you learn that

112

Jim Guy Tucker was referenced in an RTC criminal referral?
A When Cliff Sloan and Neil Eggleston told me.
Q That was when?
A We had a whole hearing on when that was.
Q I just want to --
A I don't know. Obviously it was sometime in the first couple weeks of October. If you recall, Cliff had two notes of conversations he had. His may be dated, I don't know. I had one note that reflects both of those, his notes, so my belief is that that conversation with Cliff and Neil occurred, he has heard all this, occurred after both the conversations Cliff and Neil had, or Cliff had.
Q Are you aware of an October 6, 1993 meeting between Governor Tucker and President Clinton?
A Yes, I am.
Q Did you attend that meeting?
A No, I did not.
Q Do you have any understanding as to what was discussed at that meeting?

113

A I have seen a memo outlined by Keith Mason or written by Lloyd Cutler based upon a conversation he had with Keith Mason outlining the subject of that conversation.
Q Do you have any knowledge as to whether the President or Governor Tucker discussed RTC criminal referrals during that meeting?
A Yes.
Q What information do you have?
A I have asked both, I have not asked Governor Tucker personally, but I have asked both and they both said no.
Q Do you know whether Governor Tucker had any communications with anyone at the White House staff about RTC criminal referrals?
A No.
Q Do you know whether Mack McLarty ever spoke to Mr. Bowles about Capital Management or David Hale?
A No.
Q Mr. Lindsey, you produced to the committee in October 30, 1989 deposition of David Hale?
A Yes.

114

Q Do you recall the circumstances under which you obtained that deposition?
A Yes.
MR. NUSSBAUM: He wants you to tell him what the circumstances were.
BY MR. GIUFFRA:
Q What were the circumstances under which you obtained that deposition?
A John Tull, T-u-l-l sent them to me.
Q Where is Mr. Tull employed?
A He is a lawyer with Williams & Anderson in Little Rock, Arkansas.
Q Why did Mr. Tull send you this deposition?
A Well, Williams & Anderson and Mr. Tull I believe represented the woman whose funds were taken and transferred into Capital Management to inflate the assets of Capital Management so they could get additional lending authority in 1988, and she, I believe, sued Mr. Hale and others, that would be Mr. Matthews, and I believe, also I'm not sure of this, but I believe also probably brought it to the attention of the U.S. Attorney's office, which led to

115

the ultimate indictment of Mr. Hale and Mr. Matthews, and I forget the third lawyer's name.

Q So you obtained this deposition in connection with your activities involved in developing the information for Whitewater?

A Correct.

Q Do you recall when you would have obtained that deposition?

A Sometime after all this broke.

Q Have you ever spoken to Governor Tucker about an RTC criminal referral relating to Madison?

A I do not believe so. No.

Q Have you ever spoken to anyone on his staff with regard to an RTC criminal referral relating to Madison?

A Well, I asked his staff whether or not he and the President had discussed it. Now again I don't know if it was an RTC referral relating to Madison, but, yes, I asked a member of his staff to check with him to see whether or not they had had any discussions about it in that October 6 meeting.

Q Who was the member of the staff?

116

A I think Max Parker.

Q Who is Max Parker?

A She is his press secretary.

Q Have you discussed any RTC criminal referrals with Webster Hubbell?

A I don't believe so. Again, my answer would be similar to my answer about Marsha. I don't believe we have ever discussed the substance of any of those, although we obviously have discussed the personal effects that all of this has had on everybody.

Q Are you aware that Mr. Hubbell, while he was associate Attorney General, recused himself from matters relating to Madison Whitewater?

A I read it in the paper.

Q You never discussed his recusal with Mr. Hubbell?

A No.

Q Are you aware that Ms. Casey recused herself from matters relating to Madison Whitewater?

A Read it in the paper.

Q Never discussed it with Ms. Casey or anyone

on her staff?
A No.
Q Do you know Jerry Jones?
A Owner of the Dallas Cowboys?
Q Yes.
A No. I probably have met him.
Q Did there come a time in mid-October, 1993 when you discussed -- strike that.
Did you ever discuss with Webster Hubbell -- strike that.
Were you aware Webster Hubbell had documents relating to Whitewater in his possession during 1993?
A Probably.
MR. NUSSBAUM: Let me object; it's not clear whether you are aware of that in 1993 or whether he was aware that Hubbell had it in 1993.
BY MR. GIUFFRA:
Q Were you aware in 1993 that Hubbell had Whitewater documents at his house?
A Probably.
Q How do you think, what was the basis for

your knowledge?
A Again it's hard to piece together. I was aware in December of 1992, sometime in late 1992, as we were in the process of moving up here that Web took possession of some documents from Betsy Wright. I think I was aware --
Q Do you have any understanding as to why Mr. Hubbell was given the documents by Ms. Wright?
A Again, a lot of them had to do with -- yes.
Q What is your understanding as to why the documents were given to Mr. Hubbell?
A I think it's covered by the attorney-client privilege.
MR. NUSSBAUM: Do you want to talk to me about that?
THE WITNESS: Yes.
MR. NUSSBAUM: With respect to that, having discussed this with Mr. Lindsey, he advises me that the discussions that your question would elicit a description of took place, his participation took place as part of his role an attorney to the committee and that therefore --

119

BY MR. GIUFFRA:
Q Transition committee or campaign committee?
A Campaign committee.
MR. NUSSBAUM: And therefore he believes that there is a privilege attached to it.
MR. GIUFFRA: Let's go off the record a second.
(Discussion off the record.)
BY MR. GIUFFRA:
Q Do you know the approximate amount of documents that Mr. Hubbell was given possession of?
A No.
Q Do you know what the subject matters were of the documents that he obtained?
A Some of them.
Q What were they?
A That is covered by the attorney-client privilege.
MR. NUSSBAUM: Same objection.
BY MR. GIUFFRA:
Q Were you present in October of 1993 when Mr. Hubbell provided certain documents to Mr. Lyons?

120

A No.
Q Directing your attention to the period June, 1994. You were a witness at the Senate hearings in July of 1994; correct?
A Again I'm taking your word on the date.
MR. KRAVITZ: Actually in August.
MR. GIUFFRA: Actually August. Excuse me.
THE WITNESS: I'm glad I didn't say yes.
MR. KRAVITZ: They actually started July 29, but you testified in August.
BY MR. GIUFFRA:
Q Do you have any knowledge with regard -- strike that.
You also testified gave a deposition to the Treasury IG?
A Correct.
Q Do you have any knowledge as to whether the White House obtained copies of your transcript, the deposition transcript, the transcript of the deposition that you gave to the Treasury IG?
MR. KRAVITZ: What do you mean "White House," are you including him personally?

121

THE WITNESS: I got a copy.
BY MR. GIUFFRA:
Q Do you know whether Mr. Cutler received a copy of the transcript of your deposition?
A No.
Q Do you have any knowledge of an agreement between Mr. Cutler and Secretary Bentsen under which certain Treasury IG transcripts were provided --
A Only what I read in the paper.
Q Prior to testifying in August, 1994, did you review the transcripts of any other witnesses -- strike that.
Prior to testifying in August of 1994, did you review the transcripts of depositions conducted by the Treasury IG of any other White House employee?
A Other than myself?
Q Yes.
A No.
Q Did you review any summaries of other White House employees deposition transcripts?
A No.
Q Did you review any summaries of any

122

depositions of RTC employees?
A No.
Q Did you review any summaries of Treasury employees?
A No.
Q Depositions. Are you aware of a report that the Office of Government Ethics prepared related to Treasury-White House contacts, regarding THC information relating to Madison?
A I know that a report was prepared after all, after their investigation. I thought it was Treasury IG who actually prepared it. So if it was referred to as the OGE, then yes, I'm basically familiar with that report, if that is one and the same report, yes.
Q Did you ever review a draft of that report?
A No.
Q Did you have any role in the preparation of testimony given by Lloyd Cutler to the Congress with regard to Treasury-White House contacts?
A In a very limited extent.
Q What was the limited extent to which you

123

had a role in preparing Mr. Cutler's testimony?
A He asked me about the meeting with Jim Guy and I told him what the President had told me and what the Tucker people had told me with respect to whether or not the issue of referrals ever came up in that meeting.
Q Did you attend a meeting on July 24, 1994, which was a Sunday night, in the Old Executive Office Building in which there was discussion of a chronology that had been prepared by Mr. Cutler regarding Treasury-White House contacts?
A The answer to that is I don't believe. I attended one meeting in the Old Executive Office Building of which, it was sort of a general meeting on what the ground rules were for all the people. I mean ground rules, when things would occur, how they would occur. I don't think I was at a meeting where we talked about anything other than sort of the procedures that the committee and the White House had worked out on how these, the how the hearings would unfold. And it was a meeting I think all the people were invited to. So I think that is the only meeting

124

I attended.
Q Did anyone ever advise you of anything having to do with the substance of testimony given by RTC employees before the Treasury IG?
A No.
Q Did anyone ever advise you of the substance of testimony that Treasury employees gave to the Treasury IG?
A Say that again, Treasury employees gave to the Treasury IG?
Q Yes, regarding Treasury-White House contacts?
A No.
Q Do you know Mark Stephens?
A I don't believe so.
Q Let me show you documents bearing Bates numbers BL 11709 through BL 11713. Have you seen these documents previously?
A Yes, I provided them to you.
Q What are they?
A Those are I think exhibits that were used by the Williams & Anderson law firm in the trial of

the civil case they brought in Arkansas on behalf of this woman who said that she was defrauded, whatever she claimed, by the moving of this money into Capital Management. I believe those were exhibits. Again those were things they sent me. Whether they used them as exhibits or not I frankly don't know. But I think they are outlining the transactions that occurred.

Q You obtained those after your meeting with Mr. Gerth on September 20, 1993?

A Yes.

Q Have you spoken to James Lyons about the fact that you were being deposed here today?

A I think, I had dinner with him two nights ago, I probably told him. I don't know if I told him it was today I was being deposed.

Q Did you discuss the substance of the deposition with Mr. Lyons?

A My deposition today?

Q Yes.

A No. I didn't know the subject of my deposition.

Q Did you speak with Mr. Lyons last night?

A No. What was yesterday, Thursday? No.

Q Were you aware Mr. Lyons was going to be giving a telephone deposition to the Senate?

A No. Well, I take that back. At one time he told me that he had friendly negotiations or discussions with the committee about his coming here and who was going to pay for it and that they had agreed to a telephone deposition. But beyond that, I didn't know the timing or anything else.

MR. GIUFFRA: Okay. Thank you very much. I have no further questions at this time.

MR. KRAVITZ: I don't think I have anything.

I have no questions.

(Whereupon, at 1:32 p.m., the deposition was concluded.)

BRUCE R. LINDSEY

CERTIFICATE OF NOTARY PUBLIC & REPORTER 127

I, SHEILA M. LYONS, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Sheila M. Lyons
Notary Public in and for the
District of Columbia

My Commission Expires AUGUST 31, 1997

DEPOSITION OF W. NEIL EGGLESTON
IN RE: S. RES. 120

SATURDAY, NOVEMBER 4, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of W. NEIL EGGLESTON, called for examination pursuant to notice of deposition, at 1:10 p.m. in Room 534 of the Dirksen Senate Office Building, before CRAIG L. KNOWLES, a Notary Public within and for the District of Columbia, when were present:

ALICE S. FISHER, ESQ.
Majority Associate Special Counsel
MARK J. BRENNER, ESQ.
Majority Assistant Special Counsel
GLENN F. IVEY, ESQ.
Minority Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

APPEARANCES

WILLIAM J. MURPHY, Esq.
Murphy & Shaffer
Suite 750
100 Light Street
Suite 490 North
Baltimore, Maryland 21202
On behalf of the Deponent.

CONTENTS

Witness	Examination
W. Neil Eggleston	
by Mr. Fisher	4
by Mr. Ivey	115
Errata	7073

EXHIBITS

W. Neil Eggleston

Deposition Number	Identified
Eggleston Exhibit 1	34, 7074
Eggleston Exhibit 1	61, 7079
Eggleston Exhibit 1	90, 7085

PROCEEDINGS

Whereupon,

W. NEIL EGGLESTON

was called as a witness and, having been first duly sworn by the Notary Public, was examined and testified upon his oath as follows:

EXAMINATION

BY MS. FISHER:

Q Mr. Eggleston, my name is Alice Fisher. I am an associate special counsel for the majority. To my left is Mark Brenner, office of the special counsel for the majority. And to his left is Glenn Ivey, counsel for the minority.

This deposition is being conducted pursuant to Resolution 120. This resolution establishes a special committee administered by the Banking committee to conduct an investigation involving Whitewater Development Corporation, Madison Guarantee Savings and Loan Association, Capital Management Services, Inc. and related matters.

I don't know if you have had an opportunity to look at the resolution or if you care to.

5

MR. MURPHY: I have seen it.
MS. FISHER: This deposition is in advance of public hearings, which will likely be held in November, most likely in the next couple of weeks. Right now it's unclear whether you will be called to testify at the hearing but you will be notified in advance.
I will ask a series of questions, and I will ask that you testify under oath. If you don't understand a question, let me know and I will rephrase it. If you need a break, let me know.
The stenographer will prepare a record of questions and answers and this deposition will be treated as committee confidential in advance of the public hearings.
Prior to the hearings you will receive a letter from the committee telling you that you can come to the Senate and review your transcript to make any errata, transcription errors that you would like.
If you are called to testify at the hearing, you will be notified that you can receive a copy of your transcript four days in advance of the hearing.

6

I see that you are represented by counsel.
If you would like to state an appearance for the record.
MR. MURPHY: William J. Murphy, attorney for Mr. Eggleston.
MS. FISHER: The resolution provides that your attorney may make objections to the form of question and they will be noted for the record.
You also may object on the grounds of privilege or relevance. If your counsel instructs you not to answer, a rule on the objections may be made by the chairman.
MR. MURPHY: Is he here?
MS. FISHER: No, not here today.
MR. IVEY: For the record I would note, I think you said privilege and relevance is grounds for objection. Typically, scope is considered a grounds for objection as well. That would be the, something that goes beyond the scope of the resolution.
MS. FISHER: Mr. Ivey is correct.
BY MS. FISHER:
Q Would you state your name for the record,

please.
A W. Neil Eggleston.
Q Could you state your present address?
A Home?
Q Business.
A I am an attorney at Howrey, H-o-w-r-e-y, and Simon, S-i-m-o-n. The address is 1299 Pennsylvania Avenue, Northwest, Washington, D.C., 20004.
Q How long have you been at Howrey and Simon?
A Since, most recently, since about September of 1994.
Q Could you give us a brief description of your employment history.
A On graduating from law school I clerked for Justice -- excuse me, Judge James Hunter, United States Court of Appeals for the Third Circuit. That was '78, '79.

I then clerked for Chief Justice Warren Burger from '79 to '80.

I then spent a few months at a firm here in D.C. then called Ragoche, Stern and Huge, H-u-g-e.

I left there to become an assistant United

States Attorney in the Southern District of New York. I started there on October 1, 1981.

I remained there as an assistant U.S. Attorney until January of 1987, where I was appointed deputy chief counsel of the House Committee on Investigate Covert Arms Transactions with Iran, which everybody else calls the Iran-Contra committee. I stayed there until February, January or February of 1988.

I think on February 1, or at least early February of '88, I became a partner at Howrey and Simon, same address. In fact it wasn't the same address then. But it was a Washington, D.C. firm.

I remained there until September of 1993. September of 1993 I was appointed associate counsel to the president, remained there until September, '94.

I have told you about where I have been since September of '94.

Q How did you come to be appointed to your position as associate counsel to the president?
A I was asked by Bernie Nussbaum if I would

9

take the job.
Q Generally while you were associate counsel to the president what did your responsibilities entail?
A I had no, unlike some other associate counsel who had sort of narrowly defined roles, I shouldn't say narrowly defined, but specifically defined roles, I had a catch-as-catch-can role. I did a whole variety of stuff. I did nominations. I did, you know, congressional stuff, budget stuff. I did a little bit of everything. I had no particular assignment.
Q And did you report directly to Mr. Nussbaum?
A When I first was there -- yes. The answer to that question is yes.
When I first arrived, as everyone knows, there was not a deputy. The deputy slot was filled in December by Joel Klein.
But the office was not structured such that, people reported to Klein, as a general matter who then reported to Mr. Nussbaum. It was a pretty issue-oriented reporting.

10

So on some issues I might report to Klein, if he was the person directly responsible. Generally I reported directly to Mr. Nussbaum.
Q Were you made aware of the special committee's document request to the White House for documents related to Senate Resolution 120?
A No. I don't think so.
Q Do you have any documents which may be relevant to Senate Resolution 120 in your possession?
A I hate to say no to that question only because, you know, I have not gotten a subpoena for records and I haven't really looked. And I have never read the resolution and I can't --
I mean, I think the answer is no. But I can't really -- I haven't, I am not comfortable under oath giving you that answer, because generally I left my documents at the White House when I left. So I think it's unlikely I have anything.
But I have not done any search, I haven't read the resolution, and I haven't seen a document request. So I actually can't quite --
Q Okay.

11

A -- answer that question.
MS. FISHER: Let's go off the record for a second.
(Off-the-record discussion.)
MS. FISHER: Back on the record.
BY MS. FISHER:
Q Did there come a time after September, 1993, when you became associate counsel to the president that you became aware of issues related to Capital Management Services or David Hale?
A Became aware in any fashion?
Q Yes.
A Yes.
Q Can you tell me when you first learned of issues related to Capital Management or David Hale?
A I can't.
Q Do you recall what the substance of your first knowledge related to David Hale or Capital Management was?
A Newspaper.
Q Okay.
A I mean, my -- I can't really remember when.

12

It would have been sometime in the fall.
And it was entirely from the news reports that were becoming more prevalent at that time, as I recall.
Q Do you believe that may have occurred sometime in September when Mr. Hale was indicted?
A Probably.
Q After --
MR. MURPHY: Was he indicted?
THE WITNESS: I should say I don't remember him being indicted in September '93. If he was indicted in September '93, I am sure I read it.
BY MS. FISHER:
Q Okay.
A But whether that was the first time, I just don't, you know. I mean, obviously, I knew he was indicted at some time. I don't remember that being in September of '93.
Q After you first learned of issues related to Capital Management Services or David Hale, did you have any discussions at the White House with any member of the White House staff regarding those

13

issues?
A Any conversation at all about Capital Management or David Hale?
Q Well, I am trying to target on your first, when you first became aware of issues related to David Hale or Capital Management.
A I just can't, I can't remember. I don't remember.
Q Okay.
A This was not a big issue. I mean, it was not a big topic of conversation in which I was involved, so I don't --
I mean, if I had conversations with people at that time, it's, you know, did you see what was in the paper this morning. I didn't have, I don't remember sort of in the September - October timeframe having substantive conversations with people about this issue.
Q Do you recall that at some time you became aware that Mr. Hale was indicted?
A Sure. I have no idea when.
Q Okay. Do you recall whether you had any

14

discussions regarding the indictment with any member of the White House staff?
A I don't recall.
Q For example, do you recall having any discussions with Mr. Nussbaum?
A I mean, I don't recall. I mean, I am not telling you I didn't, because I think it's highly likely that I did.
But I don't remember any conversations with him about the indictment of Hale.
Q Okay.
A I would not have thought, actually, if you hadn't told me, if you had asked me when I thought Hale got indicted, I would have said sometime in early '94.
Q Okay.
A So, so I am just, that is the state of my recollection of this whole thing.
Q Okay. Do you recall becoming aware that Mr. Hale was making allegations involving the, President Clinton and Jim Guy Tucker?
A Yes, I remember that from the press.

15

Q Do you recall having any discussions with any members of the White House staff regarding those allegations?
A Not specifically.
Q At any time at all.
A Yes.
Q Can you tell me who those discussions were with?
A I don't remember any specific discussion with anybody, but I am relatively confident I had conversations about that with Mr. Nussbaum and Mr. Lindsey.
Q Do you recall the substance of those discussions?
A I don't.
And I should say, and maybe others.
Q Do you recall becoming aware that Mr. Hale's attorney, Randy Coleman, had made contact with a member of the White House staff regarding Mr. Hale?
A I read it in the newspaper.
Q Do you recall discussing that with anyone at the White House?

16

A I don't, actually.
I remember, I remember that being written in the newspaper. If it's the right episode, it -- Mr. Kennedy, William Kennedy.
Q Do you recall having any discussions with Mr. Kennedy regarding that contact with Mr. Coleman?
A Not really.
Q Do you recall having discussions with Mr. Lindsey about that contact from Randy Coleman?
A I don't remember any conversations with Lindsey. It's possible I had conversations with Kennedy after it appeared. Kennedy and I were just down the hall from each other. It's possible I mentioned the newspaper story to him or something after it happened.
I think it's possible I had a conversation with Kennedy. But I don't remember the substance. I don't remember any conversation with Lindsey about it.
Q Do you recall any discussions with Mr. Nussbaum regarding Mr. Coleman's contact?
A No. Again, if I did it would have related

17

to a newspaper story.
Q Do you --
A Because it was a newspaper story about a member of our office.
So I don't have any substantive knowledge of it. If I had these conversations, the best I recall today is it would have related to Kennedy got his name in the paper.
Q Did you ever become aware that Mr. Coleman had attempted to contact anyone else from the White House?
A My entire knowledge of Coleman contacting people is, really, that I remember today at least, is out of that newspaper story. If there was more in the newspaper story, then I have, at least at one time had more knowledge.
But I have not gone back and looked at the newspaper stories in preparation for today, so I don't know. I don't have any recollection of knowing any contact with anybody else.
I remember the story talked about Kennedy. If you were to show me a story that said he contacted

18

somebody else, I would probably then remember he contacted somebody else. But I don't think I have any knowledge beyond that story.
Q Okay.
A Or stories. I mean, I think that story got written maybe a couple times.
Q Do you recall having any contacts with Bruce Lindsey regarding Mr. Hale's allegations.
MR. MURPHY: What allegations?
BY MS. FISHER:
Q Involving, involving President Clinton sometime on or about September 20th, 1993?
A I, it is possible that I did. I don't recall.
Q Did Mr. Lindsey ever tell you that he met with members of the press regarding Mr. Hale's allegations?
A Not that I recall.
September 20th?
Q Yes.
MR. IVEY: Did you say November?
MS. FISHER: September 20th.

19

MR. IVEY: September 20th?
MS. FISHER: Yes.
A I don't recall that.
I again had more contact with Lindsey about this issue later as it became a heavier press issue.
When I say this issue, I mean Whitewater generally. I don't remember any particular contact at that time.
Q Were you assigned any duties with regard to the Whitewater issue generally at some point?
A I was one of the people who was sort of following the issue and assisting in responding to press inquiries.
Q About what time?
A I mean, I can't tell you when I was assigned, because I don't know that I can tell you that I was ever formally assigned to do it.
And this was a matter that, until Christmas of '93, was a very episodic. I mean, it was hardly in the press until Christmas of '93. Right before Christmas of '93 it began to be a substantial press issue and then remained a substantial press issue

20

until I left. So, so, I mean, this is my recollection.
So I really was minimally involved until around Christmas. And then I became more involved around Christmas, as the story picked up.
Q Prior to Christmas, 1993, do you recall what your involvement substantively was?
A I primarily followed the news stories. Tried to assist in responding to news stories, assist others.
I never talked to the press, myself, about -- about any of the issues.
Q Who on the White House press staff did you report to?
A At the time --
MR. MURPHY: Objection to the characterization that he reported to members of the White House press.
BY MS. FISHER:
Q Discussed these matters.
A At the time the person handling the press for the White House on this issue was Mr. Lindsey,

21

and he was not a member of the White House press.
Q Was there anyone else on the White House staff that you would discuss these issues with in responding to press inquiries?
A At that time. You know, Mr. Nussbaum was involved, obviously. I reported to Mr. Nussbaum.
Q Is Mr. Nussbaum the person that asked you to follow the issue?
A Yeah. I mean, you're implying, that question implies a more formal designation. As I say, my recollection is that it wasn't much of an issue and then became more of an issue.
But by the time it was, got to -- I was the person sort of doing it. Mr. Sloan was also somewhat involved.
But, yeah, I mean, to the extent -- Mr. Nussbaum at the time is the one who gave me assignments. So to the extent I got an assignment, I got that assignment from Mr. Nussbaum.
Q Okay. I believe you testified the involvement was generally episodic until Christmas of 1993?

22

A Yes. I mean, it was episodic after that. There were just a lot more episodes.
Q Could you describe for me the episodes that you recall from that period when you started, September, '93, until Christmas of '93?
MR. IVEY: Can with go off the record for a second?
(Off-the-record discussion.)
MR. MURPHY: Let's go on the record.
THE WITNESS: Could you reread the question.
MS. FISHER: Could you read back the question.
(The reporter read as follows.)
THE REPORTER: "Question. Could you describe for me the episodes that you recall from that period when you started, September, '93, until Christmas of '93?"
A I really don't remember very clearly any of the specific issues that came up until right before Christmas.
I generally remember that, as press issues came up, and they were all press driven, a story

23

would appear in the paper, or more typically we would get a press call at 6 o'clock in the evening and they would want a comment about a story that was going to appear the next day. I would help participate in how to answer the questions. So that's mostly --

Then starting around Christmas was when the story started to appear about the file in Vince Foster's office and there was a Whitewater file. I remember that issue.

But before that I don't remember any specific issue.

MR. MURPHY: Just so the record is complete, while we were off the record Mr. Eggleston mentioned the fact that in the fall of '93 he also participated in a meeting at which various Treasury Department and RTC people were around.

THE WITNESS: Actually --

MR. MURPHY: I don't remember who all the people were, but he has testified about that meeting, which I think was October the 14th of '93, at great length in prior --

THE WITNESS: Right.

24

MR. MURPHY: -- Senate and House investigations?

A Obviously I remember, to the extent I said before I don't remember specific issues, I remember that issue quite clearly. But I have already testified about that.

BY MS. FISHER:

Q Did there come a time in November of 1993 when you learned about issues relating to the SBA, Capital Management and David Hale?

A Yes.

Q Could you tell me what you recall about first learning about that, the SBA's involvement in the David Hale and Capital Management issues?

A There was a newspaper story -- what I remember about the issue you are about to ask me about, I think, is there was a newspaper story that reported that SBA had asked, excuse me, that the SBA, House SBA committee had asked the SBA for information about Capital Management.

I don't remember the date of the story, and I don't remember what newspaper it was in.

25

Can we take a brief recess?
MR. MURPHY: Sure.
THE WITNESS: Is that all right?
MS. FISHER: Absolutely.
(A brief recess was taken.)
MS. FISHER: Back on the record.
BY MS. FISHER:
Q Do you recall who brought that newspaper story to your attention?
A I think I first read it myself. I think it was first brought to my attention by myself reading it in the clips.
Q Okay. Did you then discuss that story with someone at the White House?
A There came a time when Mr. Nussbaum mentioned the story to me.
Q Do you recall whether it was the same day?
A I don't.
Q What did Mr. Nussbaum say to you?
A The story had talked about a report being due some time in the future. Mr. Nussbaum asked me to follow up, find out about the matter.

26

Q Did Mr. Nussbaum tell you whom you should follow up with?
A I don't think he specifically told me who to follow up with.
Q Do you recall having any discussions with anyone else other than Mr. Nussbaum regarding this newspaper story?
A No.
Q What is the next action that you took with regard to this issue?
A I think some time, I don't remember days, I'm not even clear on months, but some time the day after the report was due, two days after the report was due, some time after, whatever the due date of the report was in the newspaper, as I recall, the day or so after the report was due I called the legislative affairs office at the SBA.
Q Did you call for anyone specifically, or did you just call that general number?
A Just, I did not call for anybody specifically. I don't remember what number I called.
Q Did you talk with someone at the legislative

27

affairs office at the SBA at that time?
A Someone at the office.
Q Do you recall who that person was?
A I don't.
Q Do you recall the substance of your conversation?
A Yes, generally.
Q Could you tell me generally what you recall.
A I asked whether the report had been filed, because at the time I didn't know if the report -- if the SBA had complied with the request to file.
And whomever I spoke to, and I don't remember whether it was a member of the legislative affairs office, whether it was a secretary, whether it was custodian, I don't remember who it was I spoke to, but whoever I spoke to told me that they would get back to me.
Q Prior to that time had you had any contact with any individual at the SBA?
MR. MURPHY: In his life?
MS. FISHER: While an associate White House counsel.

28

A I don't think so. I am pretty sure I had not.
BY MS. FISHER:
Q Prior to this time were you acquainted with anyone who worked at the SBA?
A No. Not that I know of.
Q Okay.
A I mean, it may be that I know somebody that works there. But I don't know that I know anybody who works there.
Q Other than Mr. Nussbaum's discussion with you to follow up on the newspaper story, had you had any discussions with anyone else at the White House regarding the report filed by the SBA relating to Capital Management?
A I don't recall.
Q Well, did someone, after this conversation with someone at the legislative affairs office of SBA, did someone then get back to you?
A Yes.
Q Do you recall who that person was?
A John Spotila, or Spitola, whichever his

29

name.
Q Do you recall the substance of that conversation with Mr. Spotila?
A Very generally.
Q Could you tell me what you recall?
A He called me. He identified himself as general counsel of the agency.
I asked him if a report had been -- I think I referenced the newspaper story and asked him whether a report had been filed. He told me that it had been. Late the night before, I think.
I asked him if it would be appropriate for the White House to have a copy of the report. And that's about all I remember.
Q What did Mr. Spotila say to you in that conversation?
A I just don't remember whether he, I mean, when I say that's about all I remember, I mean that. I don't remember whether he said I have to get back to you or whether, what he -- I don't remember what his response was in that conversation to my question. I don't remember what his response was to my question

30

in that conversation.
Q What caused you to ask Mr. Spotila whether it would be appropriate for the White House to have a copy of the SBA report relating to Capital Management?
A Well, I had been asked to follow up. I am not sure which part of that question you are accenting, but I had been asked to follow up on that report by Mr. Nussbaum. And I was calling to find out whether it got filed and, if it got filed, whether it would be appropriate for us to have a copy.
It was just, it was the logical thing, I thought, for me to do in light of the request that had been made to me.
Q Okay.
A By Mr. Nussbaum.
Q I am attempting to focus on the question whether it would be appropriate and why --
A Okay, that is what I couldn't tell.
Q Okay.
A I didn't want it if it wasn't appropriate.

31

I mean, if it wasn't appropriate for me to have it, I didn't want to have it.

I was talking to the general counsel of the agency, and I wanted to have it if it was appropriate. If it wasn't appropriate to have it, I didn't want the White House to have it.

I specifically remember asking if it was appropriate for us to have it.

Q Okay.

A I didn't know what it was.

Q Okay.

A All I knew was that ten days earlier there had been a newspaper story that there was going to be a report. I had no idea what, until I talked to him, I didn't even know whether they had complied with the time deadline.

Q Okay.

A So I had no idea of what it was, I didn't know anything about it. So --

Q For example, you didn't know whether it might have confidential information contained in the report?

32

A I didn't know anything about it.

Q Okay.

A There had not to my knowledge at the time of my call been any substantive newspaper story. I didn't know anything about it.

Q Was your concern whether it was appropriate, did that stem from your lack of knowledge whether it was confidential versus public information?

A No. It was undifferentiated. It was I didn't want to have it if it was not appropriate for us to have it for whatever reason.

I didn't have a category in my mind of what would make it inappropriate. If it was appropriate, I wanted it.

Q Okay.

A If it wasn't appropriate, I didn't want it. I didn't have a more definite thought about it.

Q What are some of the reasons it may have, that in your mind, if you can recollect, that it would have not appropriate for the White House to have it?

A I didn't really think about it. I did not

think about the reasons, because I didn't know what it was.

So I didn't have anything in my head about what would have made it inappropriate. I wasn't making the judgment. I was just asking him if it's appropriate for us to have it.

Q After that conversation with Mr. Spotila, did he tell you that he would get back in touch with you?

A That I can't quite remember. That is why I answered the other question that way. I don't remember whether he told me he would get back in touch with me or whether he told me on the phone that it would be okay.

My sort of best recollection is he told me he would get back to me. But my memory of that is extremely vague.

Q All right.

A It's extremely vague to me whether it's two conversations or one conversation. I just don't remember.

Q What is the next action in the series that

you recall?

A Well, at some point I got a couple-page letter, report, something.

Q Do you --

A I don't remember when it was.

MS. FISHER: I want to show you a document that is not Bates stamped, but it's a fax transmission sheet from Mr. Spotila to Mr. Eggleston dated 11-16-'93, time, 11:20 a.m.

And I ask you if this is the document you were just referring to.

(Witness examines document.)

A I remember getting this from him.

BY MS. FISHER:

Q Do you believe this was the first letter that you received from Mr. Spotila?

A I don't know.

MS. FISHER: For the record we should probably mark this as Eggleston Exhibit 1.

(Deposition Exhibit 1 was marked for identification.)

MS. FISHER: Because it has no Bates number.

35

MR. IVEY: May I see the exhibit, please?
MR. MURPHY: Sure.
BY MS. FISHER:
Q Page 2 of this document appears to be a news release on Capital Management Services, Inc., from SBA. And attached to that is three more pages that develop this information in more detail.
A Uh-huh. Yes. I acknowledge that I have not read this carefully since you gave it to me.
Q Do you recall that you received public information that was disclosed to the press from Mr. Spotila?
A Yes. Could I, I am sorry. Could I say --
Q Absolutely.
A It's not clear to me that I would actually remember this if I hadn't seen the fax page. I am not sure if you'd shown this to me without the fax page and without the date, I don't -- I don't specifically remember this document.
Q Okay.
A It's a fax to me. That was my fax number at the time.

36

Q Okay.
A I remember getting the, a document like this. I don't actually remember this document.
Q Do you recall who at the White House you may have given a copy of this document?
A I don't.
Q Do you recall whether you gave a copy of this document to Mr. Lindsey?
A I don't.
Q Do you recall whether you gave a copy of this document to Mr. Nussbaum?
A This specific, I mean, I think I either gave or showed a copy to Mr. Nussbaum. I must have given a copy to Mr. Nussbaum.
I just don't remember -- I don't remember giving this to Mr. Lindsey.
Q Do you recall discussing this document with anyone outside the White House after receiving it?
A Not at the time.
Q Upon reading this document --
MS. FISHER: Strike that.
BY MS. FISHER:

37

Q After receipt of this document what was the next action that you took regarding this issue?
A Can we talk outside?
MS. FISHER: Absolutely.
THE WITNESS: Can I take this with me?
MS. FISHER: Yes.
(The witness confers with counsel.)
(The reporter read as follows.)
THE REPORTER: "Question. After receipt of this document what was the next action that you took regarding this issue?"
A At some point I learned that documents had been provided to the SBA committee, as well as a report.
BY MS. FISHER:
Q Do you recall how you came to learn that information?
A I don't.
Q Do you recall whether it was Mr. Spotila who told you that?
A I think it was likely Mr. Spotila. I don't actually remember him telling me, but I assume it was

38

Mr. Spotila.
Q And you believe that that knowledge came to you some time after receiving this document --
A I just --
Q -- that has been marked Eggleston Exhibit 1, to the best of your recollection?
A I don't particularly remember if it was before or after I received this document.
Q At this point in November 16th, 1993, on or about, did you have any other responsibilities with regard to the issue of Capital Management Services, Inc., and/or David Hale in your position as White House counsel, other than what you have testified before in responding to press inquiries?
A This whole matter related to press inquiries. This matter related to press inquiries.
Q Okay.
A This, this was only in connection with -- with responding to the press.
I mean, my activity in this was directly because I had seen the story in the newspaper and I was asked by Mr. Nussbaum to follow up on a story

that was in the newspaper.
Q Okay.
A I had no other responsibilities related to capital management.
Q It is your testimony that you don't recall how it was that you came to learn that documents had been provided to Congressman LaFalce?
A I think I said it's likely, it's my testimony that I don't actually remember.
Q Okay.
A I must have learned it from Mr. Spotila.
Q Okay.
A Because I didn't have any other way of knowing anything about this.
Q What was the next action that you took with regard to this issue, then?
A At some point I asked him whether it would be appropriate for us to get the documents.
Q Do you believe you directed that request to Mr. Spotila?
A I do.
Q Do you recall the substance of that

conversation?
A I don't. And I don't -- and I don't really remember whether it's all in the one initial conversation or whether we were having more than one conversation about this. I just don't remember. It may have been all part of that first conversation. There may have been a second conversation. I don't remember.
Q Do you recall when you asked to get the documents, what Mr. Spotila's response was?
A I don't.
Q Did you --
A But I really want to explain that, because I don't remember --
At some point he said yes. But I don't remember whether he said it in that conversation or called me back.
Q Okay.
A I don't remember the scenario. But at some point he said that would be appropriate.
Q Did you have any contact with anyone else at SBA about getting the document, getting these

41

documents, other than Mr. Spotila?
A About getting the documents?
Q Yes.
A Gee, I don't think so.
Q Okay.
A I had other contacts with other people at SBA, with another person at the SBA.
Q During this time period?
A Yes, but I don't think it related to getting the documents.
Q Who was that person?
A I don't remember his name.
Q Okay.
A It was a him.
Q Do you know a gentleman by the name of Erskine Bowles?
A I have met Erskine Bowles. As of today I have met Erskine Bowles.
Q Did you know Mr. Bowles during fall and December, or fall and winter of 1993, '94?
A No, I had not met him at that time nor spoken to him.

42

When I say met him, I mean just met him.
Q Did you know he was employed at the SBA at that time?
A I came to know it.
Q Do you believe that you knew it then?
A I mean, I came to know it around this time. Whether I knew it as of the 16th -- well, I suppose I knew it if I read this: "U.S. Small Business Administrator Erskine Bowles today released"...
I mean, at least by the time I read this I knew it. I didn't know who Erskine Bowles was.
Q Okay. Do you recall whether Mr. Spotila then had the documents delivered to you or how the transfer of the documents came about?
A I got them.
Q How did you receive them?
A I got them at the SBA office.
Q You went to the SBA to pick them up?
A Yeah. I think I was on my way somewhere. I think I was on my way to the Hill. And SBA is between the White House and the Hill. I am not entirely certain of that, but I generally remember.

43

At this same time I was working on the nomination of Morton Halperin to be assistant Secretary of Defense or something like that, and his hearing was right around this time period.

Q Did you meet with Mr. Spotila when you picked up the documents at the SBA?

A I got them from him. We didn't talk particularly.

Q Was there anybody else with him at that time?

A No.

Q Prior to picking up the documents at the SBA, had you had any conversations with any members of the Department of Justice about this issue?

A No.

Q Anyone else at the White House?

A I don't remember.

Q Okay.

A And I really just don't remember. It's possible I talked to Mr. Nussbaum. I just don't remember.

Q Do you know a woman by the name of Beth

44

Nolan?

A Yes.

Q Who is Beth Nolan?

A She is a, currently a law professor at George Washington University. At the time she was an associate counsel.

Q Do you recall whether you spoke to Ms. Nolan with regard to receipt of these SBA documents?

A I don't.

Q Do you recall speaking to anyone else in the White House counsel's office with regard to receipt of these SBA documents?

A I don't. I mean to, to be clear, it's possible I did. I don't remember --

Q Your best recollection.

A My best recollection is I don't remember.

Q Okay.

A It was almost exactly two years ago. I just don't remember talking to anybody else.

Q Do you recall when you picked up the documents whether it was late in the day, early in the day?

45

A I don't.
Q Do you recall whether it was on your way to the Hill or back from the Hill?
A I don't. I am not even a hundred percent certain it was, I was going to the Hill or back from there.
Q After you received the documents did you review the document?
A Generally.
Q What do you recall about your review of the documents?
A I paged through them very quickly to see if the president or the first lady's name was mentioned.
Q What else do you recall about your review of the documents?
A Nothing.
Q Do you recall whether your review was on the day that you received the documents?
A I don't. I just don't recall.
Q Do you recall whether one of the purposes of trying to obtain these documents was to learn whether the president or the first lady's name was mentioned

46

in the documents?
A If the president or first lady's name was mentioned in the documents they were going to get leaked and it was going to be a press story. This was all about press.
Q So is it your testimony that one of the purposes of attempting to obtain these documents was to determine whether the president and first lady's names were mentioned in the documents?
A The purpose of obtaining them was to respond to press inquiries, and there would be a higher likelihood of a press inquiry if they were mentioned.
Q Do you recall whether at this time you had knowledge that there was an ongoing investigation being conducted with regard to Capital Management Services and SBA?
A I don't remember.
Q Did you show anyone else these documents --
A No.
Q -- at the White House?
A I did not.
Q Did you tell anyone else at the White House

47

that you had obtained these documents?
A At some point I talked to Bernie Nussbaum about it. And when I talked to Bernie, I don't remember.
And I don't remember whether I talked to anybody else.
Q What was the substance of your conversation with Mr. Nussbaum?
A Well, I remember a conversation with Mr. Nussbaum about giving them back. But whether I talked to him closer to the time I got them, I just don't remember today.
But I remember talking to him about giving them back.
Q Do you recall having any conversations with any employees at the Department of Justice with regard to these documents after you received these documents?
A Yes.
Q Who at the Department of Justice did you talk to?
A Irv Nathan.

48

Q What was the substance of your conversation with Mr. Nath?
A N-a-t-h-a-n. Irv Nathan.
He called me, told me he -- I mean, I remember this conversation only very generally. He basically called me, told me that he had heard that I had these documents, and he thought I should return them.
Q Did he tell you why he thought those documents should be returned?
A Not that I recall.
Q Did you ask him why the documents needed to be returned?
A Not that I recall.
Q Do you have any recollection of an understanding of why the documents needed to be returned or why the Department of Justice felt the documents needed to be returned?
A Well, I mean, I knew by now that, I mean, obviously I had read these newspaper stories. I had read the paper story leading to this. I think at least that the Kennedy story predated this.

49

Anyway, I don't really remember. But I remember him telling me that he thought I should return them.

I just don't remember the state of my knowledge as of that time because I have had so much more knowledge about stuff since then I don't really remember the state of my knowledge.

But I remember him telling me he thought I should return them.

Q What was your response to Mr. Nathan?

A I said I would talk to Bernie Nussbaum. And I said I thought it was likely that we would return them.

Q Did you talk to anyone else at the Department of Justice --

A No.

Q -- at that time?

A No.

Q Did you then have a conversation with Mr. Nussbaum?

A Yes.

Q Can you tell me what the substance of that

50

conversation was?

A I don't remember if he called me or I called him. I told him I had gotten this call from Irv Nathan, that Nathan thought we should return the documents. I said I think we ought to return the documents.

And he obviously agreed.

Q Mr. Nussbaum agreed that the documents should be returned?

A Oh, yes.

Q Did he contact anyone at the Department of Justice?

A I don't know.

Q Did Mr. Nussbaum see a copy of the documents?

A No.

Q At that time?

A No.

Q At any time?

A He might have seen a copy of this. Did he see a copy of the attached items?

Q Yes.

A He did not.
MR. MURPHY: "This" referring to Exhibit 1.
THE WITNESS: I am sorry, this referring to Exhibit 1.
I think I am the only person, I am pretty certain of this, I think I am the only person who saw the documents.
MR. MURPHY: In the White House.
THE WITNESS: In the White House. Yeah. And all the members of the SBA committee.
BY MS. FISHER:
Q Did you make any copies of the documents?
A Not that I remember.
Q Did you take any notes --
A No.
Q -- with regard to the documents?
A No, I am sure I didn't.
Q Did you write any memorandum regarding the documents?
A No. I only had these documents for a couple days.
I am sorry, I didn't mean to interrupt you.

Q That's okay.
Did you have a subsequent conversation with Mr. Nathan about returning the documents?
A I think I called him. I returned them over the weekend. And I think I called him on Monday to tell him I had returned them.
Q Did you have any conversations --
A It may not have been Monday. I think I called him -- I returned them over the weekend. And I think I called him some time after the weekend to tell him that I had returned them, because I wanted him to know I had done what I thought we would.
Q Did you have any contact with anyone else at the Department of Justice with regard to return of these documents?
A No.
Q Did you have--
A Not that I recall.
Q Do you recall any conversations with Mr. Carver about these documents?
A No.
Q Allen Carver?

53

A Absolutely not.
Q Did you have any conversations with Mr. Arterberry about these documents?
A No, I don't know who Mr. Arterberry is.
Q Did you have any conversations with Webster Hubbell regarding these documents?
A No.
Q Other than the issue of getting the documents and returning the documents, did you ever have a conversation with Mr. Hubbell regarding the attachments to the letter from the SBA to Congressman LaFalce?
A No.
Q So it's your testimony that Mr. Nussbaum instructed you to return the documents, or take care of the return of the documents?
MS. FISHER: Strike that.
BY MS. FISHER:
Q Is it your testimony you and Mr. Nussbaum agreed to have the documents returned?
A Yes.
Q Did you take steps to carry that out?

54

A Yes.
Q Can you tell me what those steps were?
A That was a Friday evening or late in the day on Friday. I tried to call Mr. Spotila. I called somebody else at the SBA who had called me the day before that I haven't already told you about.
Q Okay.
A I don't know who that is.
But I reached him and returned the documents to him.
Q It's your recollection the conversation with Mr. Nathan occurred on late Friday evening?
A It's definitely my recollection that my conversation with Mr. Nussbaum had occurred on Friday evening. That was the one I was talking about.
Q Okay.
A I can't -- I think my conversation with Mr. Nathan must have been shortly before that, but I can't really place it.
Q You mentioned that prior to that conversation with Mr. Nussbaum and Mr. Nathan you had a conversation with someone outside the SBA?

55

A Right.
Q Do you recall what office that person was in?
A I think the person worked in the counsel's office.
Q Do you recall whether that may have been Mr. Stevens?
A What was his first name?
Q Mark.
A I don't. It sounds fairly familiar. But I don't remember that was his first name.
Q Your recollection is it was someone other than Mr. Spotila?
A It was definitely someone other than Mr. Spotila. I think it was someone who worked for Mr. Spotila in the counsel's office.
I don't believe, Mark Stevens does not refresh my recollection that that was the name of the person I talked to.
Q Do you know a gentleman by the name of Wayne Foren?
A No. I mean, not that I can think of.

56

MR. MURPHY: How do you spell the last name?
MS. FISHER: F-o-r-e-n.
THE WITNESS: If you want to tell me something about it, it might refresh me. But as I sit here today I can't think of anyone by that name.
Q Could you tell me what the substance of your conversation was with the gentleman from the SBA counsel's office?
A He called me to tell me that the issue of the documents being given to me had been raised with Mr. Bowles and that Mr. Bowles thought that they should contact the Department of Justice and make sure that it was okay with the Department of Justice. They were telling me that they were doing that.
Q Is it your understanding that this conversation took place prior to any contact between the SBA and the Department of Justice?
A All I can tell you on that is what he said to me.
Q Okay.
A That is the conclusion that I drew from -- that's the conclusion that I drew from what he said

57

to me.
Q All right.
A But I don't have any personal knowledge of that.
Q Do you recall anything else about the substance of that conversation?
A Let me think. No. I mean I assumed -- no. I can't, I don't remember.
Q Did you take any action after that conversation?
A I don't remember.
Q Did you discuss the conversation with Mr. Nussbaum?
A I just don't remember.
Q Did you attempt to contact anyone at the Department of Justice at that time?
A No. They were going to contact somebody at the Department of Justice. I was not going to do it.
Q Did this gentleman from the SBA tell you what it was that was the issue that was raised by the Department of Justice?
A I don't --

58

MR. MURPHY: Objection to the form of the question.
BY MS. FISHER:
Q If you understand. I can try to rephrase it.
A Actually --
MR. MURPHY: I think you said issue that had been raised by justice. I think his testimony was they were going to go --
MS. FISHER: I apologize.
THE WITNESS: Yes. If the question is why did they think they should go to justice, he didn't really tell me.
BY MS. FISHER:
Q Did you have an understanding of why the SBA thought it was necessary to raise this issue with the Department of Justice?
A Well, I didn't have the understanding they thought it was necessary.
Q Okay.
A I actually assumed that to the extent any of that needed to take place they would have done that

59

before they ever gave it to me. So I was pretty miffed actually to hear they were about to call the Department of Justice.

And I don't remember exactly, I don't remember him telling me why they were going to go to the Department of Justice.

Q Do you recall whether you had an understanding at that time?

A I just don't remember, I don't mean to be difficult, I just don't remember the state of my knowledge about, about --

I mean, the state of my knowledge about what was happening in this area would have been from newspapers and really from nowhere else.

And I just don't remember what the state of my knowledge is about, about whether there was an investigation going on, all that kind of stuff. I you just don't remember.

Q To the best of your recollection did this gentleman from SBA tell you in that conversation that there was an investigation going on relating to Capital Management?

60

A I don't, I just don't remember. I remember that he said that Mr. Bowles had said that they should check with the Department of Justice and make sure it was okay for them to have given the documents to me. And I understood that they were going to do that.

(Pause.)

BY MS. FISHER:

Q This conversation with someone at the SBA occurred on the day before your conversation with Mr. Nathan, was that your testimony earlier?

A I didn't mean to say it was the day before. It was some time after the time I got the documents and the time I spoke to Mr. Nathan.

But I don't remember, I just can't do the dates. I don't know. I don't remember what day I got it.

Q It was your testimony that Mr. Nathan contacted you?

A That's definitely true.

Q Do you know whether Mr. Nathan contacted Mr. Nussbaum prior to contacting you?

61

A I don't. I didn't think so.
Q Okay.
A I don't think he would have called Mr. Nussbaum and then called me. I think if he were to call Nussbaum, he didn't need to call me. I think he knew I was the guy with the documents and he called me.
MS. FISHER: Mr. Eggleston, I want to show you another document, again with no Bates number. It's dated 11-16-93, time, 3:20 p.m. from John Spotila to Neil Eggleston.
I guess we should mark this as Exhibit 2.
(Deposition Exhibit 2 was marked for identification.)
(Witness examines document.)
THE WITNESS: Okay, I have looked at it quickly.
BY MS. FISHER:
Q Do you recall that you received this fax some time a few hours after receiving the fax which has been marked as Eggleston Exhibit 1?
A I don't remember this happening in this

62

order at all.
Q Okay.
A So I --
Q What is your recollection?
A I think I got this first.
MR. MURPHY: Referring to the letter that is attached to Exhibit 2.
MS. FISHER: Yes.
THE WITNESS: I think I got that first. I then later in the day got the press release. Then I got this not in the fax at all but by hand when I picked up the documents, "this" meaning the letter that says hand-delivered at the top, dated November 16, 1993.
BY MS. FISHER:
Q Yes.
A I think these are all, my recollection is that these are all kind of mixed up. These things, and I could be completely wrong about this, but these do not match my recollection of what happened.
MR. IVEY: May I see Exhibit 2 just for a second?

63

THE WITNESS: Yes.
MR. IVEY: I will give it right back.
THE WITNESS: Again, I could be completely wrong, but this, the fax sheets and the things do not match the way I remember getting this stuff. I may be wrong about that, but that is not the way I remember that.
BY MS. FISHER:
Q Turning to the third page --
A Of which exhibit?
Q Of Eggleston Exhibit 2.
A Uh-huh.
Q What do you recall about receiving this letter from Mr. Bowles to Congressman LaFalce relating to Capital Management?
A I really don't recall much of anything other than getting it.
Q Looking at the top of the page, notice, it reads "The information contained here in has been determined to be confidential in nature and, therefore, not releasable to unauthorized parties. Disclosure of this information may violate federal

64

law, e.g., Privacy Act of 1974, the Right to Financial Privacy of 1987 and 18 USC Section 1905. Utmost discretion should be exercised."
Do you recall reading that legend when you received this fax?
A I recall Mr. Spotila talking to me about that, actually.
Q What do you recall about that discussion?
A He told me -- frankly, he told me not to worry about it because they were going to release it later in the day, which is why I think I got these in a different order.
Later in the day they were going to change the intro', turn it into a press release and basically release this document. That is what I understood.
And I think I remember him telling me that is at the top but it doesn't actually apply to this, we are about to release it. That is why I am pretty sure I got this document first and then I got the press release, because at the time I got this document, it being the attachment to Exhibit 2, they

65

had not yet done the press release, which is Eggleston Exhibit 1. That is my recollection.

Q On the second page of this document, Eggleston Exhibit 2.

A I am sorry. The second page?

Q Yes.

A The letter to me?

Q Yes.

A Yes.

Q A letter from Mr. Spotila to yourself?

A Right.

Q Enclosing a copy of a letter?

A It's not enclosing a copy of a letter. That is why this is messed up.

Q Okay.

A This was in an envelope and he handed me the documents, I think. And I think I had already gotten the letter.

MR. MURPHY: You might have gotten it twice.

THE WITNESS: I may have gotten it twice.

But I got this letter by hand when he handed me the documents. This letter was not faxed to me.

66

It says hand-delivered, and it was hand-delivered.

BY MS. FISHER:

Q This letter was hand-delivered?

A The hand-delivered letter to me from Mr. Spotila.

Q Do you recall whether you got the next four pages along with what was hand-delivered on November 16th, 1993?

A Maybe. I definitely, I got this, I got this. I remember getting this.

Q Okay.

A Whether I got it as an attachment to the letter from Mr. Spotila to me, I don't remember.

Q Well, the letter, I am just confused. The letter, itself, says enclosed is a copy of Erskine's letter yesterday to Chairman LaFalce with confidential attachments.

A I just don't actually remember -- I remember getting the letter to me from Mr. Spotila. It was in a white envelope. And he handed it to me when he handed me the documents.

I just don't actually remember that, that

67

the letter to chairman LaFalce was enclosed. It may well have been.

Q Okay.

A But I don't remember that.

But I definitely got the letter to Chairman LaFalce.

Q Okay. And did you have an understanding at this time upon receipt of this letter, which is the second page --

A Yes.

Q -- the one-sentence letter, enclosed is a copy of Erskine's letter yesterday to Chairman LaFalce with confidential attachments, that the attachments you were receiving were confidential information to the SBA?

A I didn't see this when I got the attachments. I mean, it was in an envelope and he handed it to me. So when I got the documents I didn't have any understanding of the documents at all.

Q So Mr. Spotila had not told you prior to this time that the documents, the attachments were

68

confidential?

A I don't think so.

Q Okay. Did you have a conversation with Mr. Spotila about the documents being confidential?

A I just don't remember. I don't remember.

Q At any time did you have a conversation with Mr. Spotila about the attachments?

A I mean I -- we had some conversation when he handed them to me. I just don't remember what it was.

I am sure we had a conversation when he handed me the documents. I don't remember what the conversation was.

Q So you don't recall whether you knew at that time the attachments contained information that was confidential and, in nature, and not releasable to an unauthorized party?

MR. MURPHY: I am sorry, and what?

MS. FISHER: Not releasable to unauthorized parties.

And I am reading from the legend which is attached.

A I don't, when I got the documents I didn't know what was in them. It was just a stack of documents in an envelope or something. I had no idea what was --

I knew that they were documents which had been provided to congress which is the only reason I asked for them. I never would have asked for these documents just from the SBA. What I asked was whether we could have what had just been given to -- to the SBA committee.

So I knew they were outside of the SBA. If they had just been sitting in the SBA I never would have asked for them.

Q Did you attempt to get the documents from the, from congress?

A No.

Q Did you attempt to get the documents from any other source?

A No.

Q Did you attempt --

A As I say, what I really intended to do was just ask legislative affairs at SBA.

Q For the documents?

A Yes.

Q During this period of time were you attempting to collect any other information regarding Capital Management?

A No. And I only collected this because of the newspaper story and because it was given to congress.

Q So --

A So I was not otherwise seeking information about Capital Management.

Q Okay. After you picked up the documents did you take them back to your office at the White House?

A Yes.

Q At that time did you read this letter?

A Let me answer that question which is, yeah, unless I went to the Hill first and then went to my office.

Q Okay.

A Ultimately they got, by the end of the day, depending on where I went next, they made their way back to my office and at some point I read the

letter.
Q When you read the letter did you have any concerns that you may have been in violation of the Privacy Act that the White House received these confidential SBA documents?
A I didn't actually. I had asked the general counsel of the agency if we could have them. He provided them to me with a cover letter.
I mean, there was nothing secret about having received them. There is a formal cover letter to me signed by him.
I asked the general counsel if we could have them, if it would be appropriate. He knew what was in them. I didn't know what was in them.
I knew they had gone to congress so I knew they were not as if they were held within, only within the agency.
I thought the likelihood -- I mean, I just didn't, I did not think that I was getting something that I shouldn't have gotten.
(The witness confers with counsel.)
BY MS. FISHER:

Q Did you want to supplement your answer?
MR. MURPHY: No, he wanted to make it shorter.
THE WITNESS: I wanted to make it shorter, actually.
MR. MURPHY: The short answer to your question was no. The long answer was the answer he gave.
THE WITNESS: But I would say this, if I thought I was getting something I wasn't entitled to, I wouldn't have taken it. I would have turned it back in a lot faster.
I told Nathan, I told that guy that called me on the phone, Mark Stevens or whatever his name is, if I thought I was getting something I wasn't entitled to I wouldn't have taken it.
This wasn't a secret thing that was going to get hidden or something, in the files or stuff. I wouldn't have taken it if I thought it was inappropriate.
BY MS. FISHER:
Q Do you recall the conversation you had with

73

the gentleman at the SBA, who I think you just said may be Mark Stevens --

A You talked as if you knew who he was. I don't remember that.

MS. FISHER: We are pretty confident it was Mark Stevens, aren't we?

MR. IVEY: Yes. He said he didn't remember, we gave him the name.

MS. FISHER: I don't want to keep saying --

MR. MURPHY: We can have an understanding among ourselves when you or I says Mark Stevens, we understand it's the person you apparently believe is Mark Stevens, Neil doesn't recall.

MS. FISHER: Off the record.

(Off-the-record discussion.)

MS. FISHER: Back on the record.

BY MS. FISHER:

Q Do you recall at that conversation with Mr. Stevens whether he expressed any concerns that it may have been a violation of the Privacy Act that the documents were transferred to the White House?

A I think he did not actually. I think the

74

only, I think that he was calling me, all I know is what he said. I don't remember him saying anything about the Privacy Act.

It was first Mr. Bowles said you should check with Justice. And he was, I don't think it related to the Privacy Act.

Q Prior to that conversation with Mr. Stevens and the next conversation you had relating to this matter, which I believe you testified was with Mr. Nathan when Mr. Nathan called you, did you have any other conversations or contacts regarding the attachments?

A Not that I remember. I was pretty involved in the Halperin hearings at the time and I just, I don't remember.

Q You don't recall that conversation with Mr. Stevens causing you to take some action?

A No.

Q Okay?

A I expected -- it's possible I told Mr. Nussbaum, although I don't remember telling Mr. Nussbaum I expected to hear, actually I expected to

hear back from him, frankly, telling me that he wanted the documents back or that he had contacted justice and they had no objection.

Q When Mr. Nathan called you on, I believe Friday --

A -- keep saying --

Q Was the best of your recollection?

A Actually, I don't, I think I talked to Nathan Friday. I think I talked to Nathan Friday because I think having talked with Nathan I brought this up with Mr. Nussbaum.

Q When you talked to Mr. Nathan do you recall whether he expressed to you any concerns that there may have been a violation of the Privacy Act that the White House received these confidential --

A No.

Q -- SBA documents?

A No.

Q When you reviewed the attachments did you notice or do you recall that you noticed that there were references to Madison Guarantee?

A I don't remember references to Madison

Guarantee.

Q Do you recall any references to James McDougal or to Susan McDougal?

A I don't.

Q Do you recall any references to Guy Tucker?

A I don't.

Q Do you recall whether there was anything in the attachments that, or do you recall anything specific about the attachments?

A No. It was information about Capital Management. My recollection, it was information about, that was in the SBA about Capital Management.

Q Do you recall whether at this time you knew of David Hale's allegations against, or not against, but --

MS. FISHER: Strike that.

BY MS. FISHER:

Q Do you recall whether as of this time you knew of David Hale's allegations involving President Clinton?

A I don't know.

MR. IVEY: I am sorry?

77

THE WITNESS: I just don't remember. If it was in the newspaper story, then I was aware of it.

BY MS. FISHER:

Q Okay.

A I would only have had any knowledge of this from the newspapers.

Q Okay.

A And if it was in the newspaper story -- I read the newspaper story that talked about the request of this report, because that is how I got into this problem. If it was in there, then I guess I knew about it.

But today I do not remember what I knew about, about that.

Q After your conversation with Mr. Nussbaum, I believe you testified that you tried to call Mr. Spotila?

A Uh-huh.

Q And you could not reach him?

A That's correct.

Q And there was someone else at the SBA that you did reach?

78

A Yes.

Q Okay.

A It the same guy I spoke to.

Q Okay.

A Who may or may not be Mark Stevens.

Q Do you recall what the substance of your conversation was with Mr. Stevens at that time?

A Yes.

Q Could you tell me what the substance of that conversation was?

A I told him that -- that -- I mean, again, he was the guy who told me they were going to call Justice, so I knew he knew that there had been a contact with Justice.

I told him that, as best I recall I told him that Justice has called, that they wanted us to return the documents. That I wished I'd never gotten these documents. That I didn't intend to get any documents.

I basically told him what I just said to you, I didn't intend to get any documents that were going to cause the Department of Justice or anybody

79

any problems. And I wanted to get them to him as fast as I could. I wanted them out of my hands.
Q What do you recall that Mr. Stevens said?
A I reached him at the office.
Q Okay.
A I think on Sunday. He said, "Fine, I am in the office. Bring them to me." And I took them to him.
Q When you called Mr. Stevens were you at home, or were you at the White House?
A I think I called him from home.
Q Did you have the documents with you at your home?
A No. No, of course not.
Q So after the conversation with Mr. Stevens, what action did you take?
A I got in my car with my family, actually. Drove to the White House. Picked up the documents. Drove them to SBA. Handed them to Mr. Stevens. Then took my family to church. It was a Sunday morning, as I recall.
Q Were the documents kept in your office at

80

the White House?
A Yes.
Q Any particular place? In your files, on your desk? Do you recall where they were kept?
A I don't.
Q Is your office generally locked at night?
A Yes, absolutely.
Q Were the documents within your office that would have been locked?
A Yes.
Q Do you know if anyone else made copies of the documents while they were at the White House?
A I am virtually certain that no one else made copies of the documents while they were at the White House.
Q Other than Mr. Nussbaum, did you discuss the documents with anyone at the White House?
A I don't remember.
Q Do you recall telling anyone else at the White House, for example, that the president and first lady were not mentioned in those confidential documents?

81

A I don't remember.
Q Do you think it's likely that you discussed that with someone at the White House?
A I just don't know.
Q Do you recall discussing it with Mr. Lindsey?
A I don't.
Q Did Mr. Nathan tell you whether anyone else at the Department of Justice had concerns regarding the delivery of documents?
A Not that I recall. I think he was, he was associate deputy or something and he was calling to tell me to return the documents. We did not debate this issue. He was the Department of Justice telling me that he wanted me to return the documents.
Q Do you recall whether Mr. Heymann was involved at all in this issue?
A Mr. Nathan worked for Mr. Heymann, so it wouldn't surprise me if Mr. Heymann were involved in the issue.
But I didn't have any conversation with Mr. Heymann, so --

82

Q Did you have any conversations with Mr. Margolis?
A No. About this issue?
Q Yes, about this issue.
A No.
Q Is it your testimony that when you spoke with Mr. Nathan you told him that you wanted to consult with Mr. Nussbaum and then you would get back to him, or how was the conversation left?
A I think I conveyed to him that we would likely agree to what he asked but that I didn't have the power to decide. That I reported to Bernie Nussbaum and I had to talk to Bernie Nussbaum.
And he concluded the conversation by saying, "I know you will do the right thing, Neil," which is part of the reason I called him to tell him I returned them.
Q Did Mr. Nussbaum have any involvement in you getting the documents, the attachments?
A I got the documents. But I reported to Mr. Nussbaum. This had just become an issue as a result of the Department of Justice being involved. I

didn't feel I had the power to make the decision to turn them back without consulting with my, the person to whom I reported.

I told him, I think I conveyed to him, to Mr. Nathan, we were fairly confident we would comply but that I had to talk to Mr. Nussbaum. I couldn't make a commitment until I talked to Mr. Nussbaum.

Q Around this period in the fall of 1993 are there any other agencies where you attempted to get information, or did indeed get information regarding materials that would help you respond to press inquiries?

A Well --

MR. IVEY: Well --

MS. FISHER: That is a convoluted question. But what I am generally trying to get at is whether it was your normal practice to attempt to get information, or was this a specific thing that you did, as opposed to having the press do it.

MR. MURPHY: Having the press do it?

MS. FISHER: Not the press, the press staff.

THE WITNESS: Press staff.

MR. IVEY: Could we go off the record for a second.

(Off-the-record discussion.)

MS. FISHER: Would you like me to rephrase the question?

THE WITNESS: Sure.

BY MS. FISHER:

Q What I would like to know, Mr. Eggleston, is whether this instance where you attempted to follow up on press inquiries and obtain documents from the SBA, was that a usual or regular thing that you did in requesting documents from --

A Right.

Q -- agencies?

A Well, let me comment on your question first, then I will answer what you said.

I was not -- I was requesting documents that had been given to congress. I got to keep saying that. I was not requesting documents from the SBA. I was requesting, I was asking SBA whether it was appropriate for them to give me documents that they had given out.

85

I would not have just called the SBA and asked them, even if response to a press inquiry, I don't think I would have called up and asked them the state of their records.

It was because they had, all these documents had left the SBA and gone on to congress was the only reason I asked the question.

I didn't think about whether the Privacy Act would, you know, somehow there was a distinction between they could give it to congress but not to us.

And I don't know what that law, I mean, I didn't -- these were documents that had left the agency. And I just wanted to know whether it was appropriate for us to see documents that had left the agency.

I don't mean to keep coming back to you, but I did not call the SBA and say can you give us your files on Capital Management. All I, I just asked for stuff that had been given to congress and if it was appropriate to have them.

The other thing is, yeah, it was not uncommon for there to be teams in the White House or

86

someone from the counsel's office, at the same time I am doing the Halperin nomination there was a team of people responsible for it. There were press people, there were people from the Department of Defense who were involved in it.

There would be press inquiries about matters within the Department of Defense that required us to collect the information and get a response back. I just remember Mr. Halperin's nomination was pretty hotly contested.

And so the notion of sort of the White House working with an agency to respond on an issue is a very common matter. And yes, I definitely did that kind of stuff.

Q What factors would go into the determination that someone from the White House counsel's office would attempt to obtain documents rather than someone from the press staff?

A Well, the press staff, they were extremely competent and good, but they were sort of overworked. We tended, they tended at the White House to be more the spokesperson.

87

But they needed, they needed backup. I mean they can't, the press and the White House is just this crazy event with a thousand questions every day. And they can't possibly get a question, research the answer, get the right answer and respond in the time period. So they always have, they always need backup. They need somebody to tell them what the answer is. They can't make all the calls.

So it wasn't just the counsel's office, other, if it was a matter related, question related to the crime bill, before there was, you know, these daily press briefings with DeeDee Myers, who was the person at the time is going to get a question, thinks there is going to be crime bill questions, she, she relies on people at the White House who are working on it, the agencies, to collect the information so she can respond.

But she doesn't do it all herself. She couldn't possibly collect all the information that she would have to know to respond to questions. Any possible questions in time for a press briefing, so that's the way, that is just one of the ways it

88

works.

Q Is there someone in particular on the press staff that you were working with on the Capital Management, David Hale?

A No, I think I said earlier, I think Mr. Lindsey was pretty much handling the press issues at the time. To the extent I dealt with anybody it would have been DeeDee Meyers.

But when you say the Capital Management Hale issue, that doesn't mean anything to me. If you say the Whitewater issue --

Q Okay.

A I really mean that, Capital Management, David Hale, was not its own issue.

Q It was part of the Whitewater issue?

A Yeah, it was the Whitewater problem and Mr. Lindsey was the principal press person, as I think his, if you read the stories he is the guy quoted all the time, not Ms. Meyers.

Q As we sit here today you don't recall whether you had any discussions with Mr. Lindsey regarding the documents that you obtained from the

89

SBA?
A I am sorry, I just don't.
Q That's fine. Did anyone from the SBA during any of your conversations in this period, November 16th to the next couple weeks in the future, in any conversations that you had with any member of the SBA tell you that there was an ongoing and criminal investigation regarding Capital Management and David Hale?
A I never had any conversations with anybody at the SBA from that Sunday morning to the present.
Q Prior to that Sunday morning, then?
A Not that I remember.
Q Do you recall anyone from the Department of Justice telling you that there was an ongoing criminal investigation involving Capital Management and David Hale?
A I don't mean to evade that question. I just don't remember what the state of my knowledge was and I just don't, I just don't remember the answer.
Q I want to show you a letter that is dated November 20th, 1993 from Mr. Eggleston to Mr.

90

Spotila.
(Witness examines document.)
THE WITNESS: Uh-huh.
BY MS. FISHER:
Q Could you just describe for the record what this document is?
A This is my letter, that is my signature, returning the documents. It says to Mr. Spotila. I didn't actually deliver it to Spotila, I delivered it to that other guy.
But I am sure this is just a cover to the letter, to the documents that I returned.
Did you want to mark this?
MS. FISHER: Sure, we can mark this as Eggleston Exhibit 3.
(Deposition Exhibit 3 was marked for identification.)
BY MS. FISHER:
Q Other than the information you received from the SBA, did you do anything else to collect information relating to Capital Management or David Hale while you were an associate counsel at the White

House?
A Only press.
Q Did you have any contacts with anyone in the Eastern District of Arkansas in the fall of 1993, U.S. Attorney's office --
A No.
Q -- in the Eastern District of Arkansas?
A No.
Q Did you have any contacts with anyone from the Department of Justice other than the conversation you had with Mr. Nathan regarding --
MR. MURPHY: About Mr. Hale? I am sorry. I interrupted you.
MS. FISHER: That's all right.
BY MS. FISHER:
Q Regarding Capital Management or David Hale?
A Not that I recall, and I don't think I did.
Q Did you have any contacts with any employee of the FBI relating to Capital Management or David Hale?
A No.
Q Did there come a time when members of the

Department of Justice or members of the FBI came to interview you with regard to this issue --
A Yes, I am sorry. Yes.
Q Regarding documents of the SBA --
A Yes.
Q I don't want to get into the substance of the interview, but could you tell me what you recall about that?
A They just came to ask me what happened, how I got the documents, why. And I told them.
Q Do you know whether they interviewed anyone else at the White House at that time with regard to this issue?
A I don't think so. They may have interviewed Mr. Nussbaum. I don't know.
Q Do you remember discussing that with Mr. Nussbaum?
A I wouldn't have been interviewed without discussing it with Mr. Nussbaum. I don't actually remember discussing it with Mr. Nussbaum, but I am certain I wouldn't have agreed to an FBI interview without discussing it with Mr. Nussbaum.

93

Q Do you recall whether there was an issue of whether, of whether you would agree to be interviewed by the Department of Justice or FBI with regard to this issue?
A There was not an issue.
Q Was there an issue of whether there was going to be another member of the White House counsel's office sitting in on the interview?
A Yes. But there was never an issue about whether I would be interviewed. Of course I would be interviewed.
Q Were there any issues regarding that interview --
A No.
Q -- that came up at that time?
A Not that I know.
Q Do you recall how that was resolved, that issue, whether White House counsel would sit in on your interview?
A I don't, actually. I don't remember.
Q Did you have any contacts with any member of the Department of Justice regarding RTC criminal

94

referrals relating to Madison Guarantee?
A No, not that I recall. I mean, I guess I need to keep saying that. It was two years ago.
Q Sure. Everything is to the best of your recollection. Absolutely.
A But I don't remember any conversations with anybody, and I don't think I did.
Q Do you have any recollection of any contacts you had with the RTC involving Madison Guarantee?
A Well, I mean --
Q Other than --
A Other than what I testified about?
Q Yes.
A No.
Q Other than what you have testified about.
A No.
Q During the time that you were having contacts with Mr. Spotila, were you aware that Mrs. Clinton had recommended Mr. Spotila for a post at the SBA?
A No.
Q Did you ever have any conversations with the

95

first lady regarding Capital Management or David Hale?
A I don't think so.
Q Did you ever have any conversations with the president involving Capital Management or David Hale?
MR. MURPHY: I am going to object for the record.
I think I know what the answer is, so, if your answer is other than no, I think we ought to talk about it.
A I don't remember any conversations with the president about David Hale.
BY MS. FISHER:
Q Do you recall any conversations you had with Mr. Lindsey regarding Capital Management or David Hale?
A I don't. I am sure in the year I was there I had conversations with Lindsey about Capital Management and David Hale because it became one of their repeated allegations, it was in story after story after story.
But I don't remember any specific

96

conversation with him.
Q Do you recall having any conversations with Ms. Williams regarding Capital Management or David Hale?
A Maggie Williams?
Q Yes.
A I don't remember any. Are you going to ask me about Susan Thomases?
Q I will --
A No, I don't --
Q -- if you'd like me to.
(Laughter.)
BY MS. FISHER:
Q Were you involved at all with regard to the issue of Mr. Bowles's recusing himself from the Capital Management matter?
A No.
Q At the SBA?
A I didn't know he had done that.
Q Did you have any conversations with Mr. McLarty regarding Capital Management or David Hale?
A No.

97

Q Okay.
A Not that I remember.
Q Okay.
A Not that I remember.
MS. FISHER: I want to show you a document that is Bates stamped 02894. It's a list of attachments.
Do you do you recognize this document, Mr. Eggleston?
It's also Bates stamped GAC 2041, for the record.
(Witness examines document.)
A Do I recognize it?
BY MS. FISHER:
Q Yes.
A No.
Q Do you--
A I can guess what it is, but I don't recognize it.
Q What do you believe this document to be?
A I don't, I shouldn't -- I don't believe it to be anything. In light of the last two hours of

98

discussions, seeing it says "list of attachments," I am willing to bet I know what it is. But wholly based on the--
Q Do you have any reason to believe that this is not a list of attachments you received from the SBA?
A I don't have any feeling one way or the other. I don't remember these, whether they were the documents, but --
Q Do you recall the indictment of David Hale was within the attachments that you received from the SBA?
A No. I am not saying it wasn't, but I don't remember that it was.
Q Do you recall whether a memorandum referring Capital Management to the Inspector General for investigation from the associate administrator, dated May 5, 1993, was part of the documents that you received?
A I don't.
Q Do you recall whether any of the audit reports of Capital Management were with the

documents?
A I don't. I don't remember -- remember what I saw.
Q I believe you testified that you have made no copies of any of the attachments, is that correct?
A I don't remember making any copies. I certainly didn't keep any copies. If I made any copies, I gave them back. I did not keep anything.
(Pause.)
BY MS. FISHER:
Q Do you recall whether you may have shredded any copies that you may have made of any of the attachments?
MR. MURPHY: Objection to the ambiguity of the question.
BY MS. FISHER:
Q Would it refresh your recollection to ask you whether you recall --
MR. MURPHY: Just ask him if he recalls shredding any documents.
MS. FISHER: He said he made no copies. I am just trying to avoid --

A No. I don't remember -- I didn't say I didn't make any copies. I said I don't remember making any copies.
BY MS. FISHER:
Q Right. I am trying to refresh your recollection.
A I know when Sunday morning was over I had no documents and no copies.
Q Okay.
A Now whether I, by sled, I mean, it would be thrown in my burn bag. I don't go walk to a shredder. At the White House everybody's got a burn bag.
By Sunday morning I had no copies. I had no documents, and no copies.
Q All right.
A If I made a copy, I don't remember making a copy, if I made a copy I either gave it back to them or threw it in my burn bag.
But Sunday when I was done handing them to whoever it was at the SBA, I had no copies that I recall.

Q Okay.
A I made an effort to make sure I had no copies left.
Q I would like to switch gears.
A Okay.
Q And turn to another issue that is a subject of our resolution involving a report issued by the Office of Government Ethics regarding White House treasury contacts.
A Okay.
Q Are you familiar with that report by the IG, Treasury IG and --
A Sure. Sure.
Q Do you recall being deposed by the Treasury IG and RTC IG involving the investigation conducted into White House Treasury contacts?
A Yes.
Q Do you recall --
MR. MURPHY: You were deposed by someone.
A I was deposed by someone. I don't remember who it was.
MR. MURPHY: There were a couple people

there.
THE WITNESS: There were a couple people there. Generally, yes.
BY MS. FISHER:
Q Do you recall receiving a copy of your transcript after that deposition for purposes of making an errata sheet?
MR. MURPHY: I recall it.
BY MS. FISHER:
Q Do you recall --
A I think actually my counsel is the one who received it. I don't think I received it.
Q Okay. Do you recall whether you provided copies of your transcript to anyone within the White House?
A I did not provide a copy of the transcript to anybody in the White House.
Q Do you recall discussing your deposition by the Treasury IG and RTC IG with anyone else at the White House?
A Outside the White House?
(Off-the-record discussion.)

THE WITNESS: I thought you said outside the White House. I don't think it matters actually.
MS. FISHER: I will strike that.
BY MS. FISHER:
Q Do you recall whether you provided a copy of your transcript to anyone in the White House?
A I don't remember providing a copy of the transcript to anybody at the White House.
Q Do you recall discussing your deposition transcript with anyone in the White House?
A Discussing the transcript?
Q Yes.
A No. I am sure I told people at the White House I was deposed.
Q Do you recall seeing deposition transcripts of other members of the White House?
A I think I did not. I do not remember seeing deposition transcripts of other people.
Q Do you recall seeing summaries of other depositions taken by the Treasury IG or RTC IG with regard to White House/Treasury contacts?
A I am pretty certain I did not see any.

Q Do you recall seeing any transcripts of depositions of RTC employees?
A No.
Q Do you recall seeing any depositions of Treasury employees?
A No.
Q Do you recall seeing summaries of either of those?
A No.
Q Do you recall seeing a draft chronology listing the contacts that had occurred between the White House and Treasury?
There was eventually one submitted to congress.
MR. MURPHY: What did you say?
MS. FISHER: I know there was a final report that was eventually submitted to congress on July 30th.
THE WITNESS: By whom?
MS. FISHER: The OGE based on the Treasury IG and RTC IG investigation.
THE WITNESS: So you are asking whether I

saw --
BY MS. FISHER:
Q A draft of that?
A Of the OGE?
Q Right. OGE crime/--
A I don't think so.
Q Did you see chronology prepared by someone in the White House?
A I think I probably saw Lloyd's testimony before he gave it.
Q Do you recall attending a meeting prior to Mr. Cutler's testimony to discuss the chronology that he was --
A I don't remember. It wouldn't surprise me if I did. I wouldn't remember.
Q Do you recall discussing Mr. Cutler's --
MS. FISHER: Well, strike that.
BY MS. FISHER:
Q Do you recall seeing a draft of Mr. Cutler's testimony?
A I think so.
Q Do you recall any discussions or any

meetings regarding that testimony?
A I don't. And I don't remember when I saw it. I mean, by the time I saw it, I had, I had testified about this countless times under oath. So it didn't have any impact on anything I said, I will tell you that.
I don't specifically remember seeing it, although I think I saw his testimony before he gave it.
Now I don't really remember whether I saw his Senate testimony or House testimony, but I was long committed to my, to what happened.
Q Were you interviewed by anybody within the White House regarding the White House/Treasury contacts?
A Sure, I must have been. Yes, of course.
Q Do you recall who that may have been?
A I assume it was Ms. Sherburne and Ms. Cheston.
Q Do you recall whether that was prior to your testimony before the Senate Banking Committee last summer?

MR. MURPHY: By last summer, you mean summer of 1994?

MS. FISHER: Summer of 1994. Sorry.

A I don't. Probably.

BY MS. FISHER:

Q Do you recall Ms. Sherburne or Ms. Cheston discussing anyone else's testimony with you at that time?

A No.

Q Do you recall Ms. Sherburne or Ms. Cheston advising you of any information that you didn't have based on your own personal knowledge regarding the White House/Treasury contacts at that time?

A Not that I remember.

Q Was there --

A There was certainly no effort by them to change my testimony.

Q What I am trying to get at is if they made you aware of any other information that was out there.

A Not that I remember.

Q Do you recall anyone else within the White

House other than Ms. Cheston and Ms. Sherburne that were working on this issue at the time?

A Mr. Cutler. Mr. Cutler was only brought in to conduct an investigation and figure out what happened. So he was obviously --

I think it was the two of them who were principally doing it because they were the two outsiders who hadn't been in the White House at the time the events took place.

Q Do you recall becoming aware at some point that the White House had received --

A Can I amend that answer?

Q Absolutely.

A There were two people who worked for them, or one person. There were something like, there were a couple people lower than them whose names I don't remember. I just want to be accurate.

Q Were those people lawyers or interns; were they permanent staff?

A No, I think it was a lawyer. A woman.

Q Do you recall becoming aware at some point that the White House had received copies of

deposition transcripts of RTC employees and Treasury employees prior to Mr. Cutler's testimony?

A I don't have, I don't have a recollection of percentage knowledge of that.

Q You don't recollect becoming aware of that?

A Well, it became sort of a press issue at some point.

If you are asking if I knew about it at the time, I don't really remember knowing about it at the time it happened. I remember it became sort of an issue with Senator D'Amato --

But I don't know. I don't remember having personal knowledge about it.

But I kind of remember the issue, but I don't, I think I may be remembering the issue and not the event

Q Do you recall having any knowledge of use within the White House of RTC IG and Treasury IG transcripts --

A No.

Q -- prior to the banking committee hearing?

A No.

Q So do you have any recollection of a meeting at the --

A Could we take a break?

MS. FISHER: Absolutely.

(A brief recess was taken.)

BY MS. FISHER:

Q Mr. Eggleston, do you recall attending a meeting at the Old Executive Office Building with others from the White House involved in this Treasury/White House contacts issue prior to the Senate Banking Committee hearings last year?

MR. MURPHY: You mean like just prior?

A Just prior?

BY MS. FISHER:

Q Just like in that week prior.

A Not specifically.

Q Okay.

A I don't mean to say specifically to evade, either. I don't really remember one way or the other.

Can you help me --

Q I can try. I don't want to --

111

Do you recall attending a meeting with others at the White House that were involved in this issue and their lawyers where a copy of a draft a chronology, be it Mr. Cutler's or somebody else's, or a chronology was passed out and everybody was asked to review the chronology?

A First, it wouldn't have been anybody else's chronology. I say I may have read Cutler's testimony.

Q Okay.

A It wouldn't have been anybody else's chronology. I sort of remember seeing Cutler's testimony before he testified. I don't quite remember it being at a big meeting.

Q Okay.

A Although I suppose it could.

Q Do you recall being asked to review Mr. Cutler's chronology for any inconsistencies that you might see prior to the committee's hearings?

A I mean not specifically. I mean, I sort of think I saw his testimony before he gave it.

Q Did that testimony attach a chronology of

112

contacts, is it your recollection?

A His ultimate testimony did. Whether the version I saw had a chronology or just his textual statement, I don't remember. I am not a hundred percent certain I remember reviewing it, although I think I did.

(The witness confers with counsel.)

BY MS. FISHER:

Q Did you want to add anything?

MR. MURPHY: No.

MS. FISHER: Okay.

A No.

BY MS. FISHER:

Q Do you --

A But I don't remember, I don't remember attending a big meeting in the Old Executive Office Building where, where the testimony got passed around.

Q Do you recall whether when you reviewed Mr. Cutler's draft testimony it contained information regarding testimony from the RTC employees or the Treasury employees?

113

A Boy, I don't remember. I thought -- Look, I mean, not that I remember.
Q Okay.
A I thought what, what I reviewed was what he was going to say about what we had all done, and I was one of the people who had done it.
And what I remember is -- I mean, I could be wrong in this recollection, but I remember what he was testifying about was his investigation of what happened at the White House.
So, but then what he testified to is a matter of record.
Q Sure.
A So I hate to be -- and I don't actually remember what he said.
Q Do you have any knowledge that your counsel provided any copy of your transcript to the White House counsel's office?
MR. MURPHY: Objection. You don't have to answer that.
A I don't want to answer a question like that. I would have no way of knowing that without

114

reviewing --
MS. FISHER: Okay.
MR. MURPHY: And you are not going to answer?
THE WITNESS: And I am not going to answer.
MS. FISHER: That's fine.
BY MS. FISHER:
Q Do you have any knowledge of any contacts between the White House and the U.S. Attorneys office in the Eastern District of Arkansas regarding Madison or Capital Management?
A No.
Q Do you have any knowledge of any contacts between the White House and the Department of Justice regarding Madison or Capital Management?
A Other than the ones I have just testified about?
Q Yes.
A My conversations --
Q Right.
A No.
Q Do you have any knowledge of any contacts

115

between the White House and Department of Justice relating to David Hale?

A No. Except to the extent you could construe my conversation with Irv Nathan to include David Hale.

Q I am not limiting these questions to just your contact with them.

A No, I understand.

Q Okay.

A I have no knowledge. You could argue except for my one conversation with Mr. Nathan.

MS. FISHER: I don't think I have anything further.

MR. IVEY: Why don't we take a short break while I go through and decide if I need to ask anything.

(A brief recess was taken.)

EXAMINATION

BY MR. IVEY:

Q Good afternoon, Mr. Eggleston. My name's Glenn Ivey. I just had a couple follow-up questions to pose.

116

In mentioning the review of Mr. Cutler's testimony you said that you thought it had to do with what we had done. I just wanted you to flesh that out a little bit.

Who is the "we" you are referring to and what was done?

A Well, Mr. Cutler had been brought in at the resignation of Mr. Nussbaum to investigate, I think actually at the ceremony where he was announcing, he announced one of the things he was going to do was look into what the White House staff had done in connection with the White House/Treasury contacts and would be making a report to the president on that or making a report on that.

So part of his mandate was to talk to the participants who had been involved in these contacts as they had come to be called and get to the bottom of what happened.

So, yes, they definitely interviewed a number of us as part -- that is what they were doing. They were conducting their own little investigation.

Q Your review of his testimony was connected

to the interview that you had given previously?
A Yeah. Yeah.
Q Was it to ensure the accuracy of the interview?
A Yes. Yeah.
Q Do you know if there was any other purpose, such as to convey information to you that you weren't supposed to have--
A No.
Q -- for any particular reason?
A No. And as I say, by that time I was well locked in so that I -- I didn't, I couldn't have been altered if they had had that intention.

Nobody, it was not my sense anybody was showing me this in order to influence what my testimony would be.

Q You were locked in because you testified, I think you had already done your deposition for this committee?
A I think I had done deposition for this committee, I had been interviewed by the House staff by then.

(The witness confers with counsel.)

THE WITNESS: Anyway, I was locked in.

MR. IVEY: All right, I have nothing further.

THE WITNESS: Thank you.

MS. FISHER: Thanks so much for coming down.

(Whereupon, the deposition was concluded at 3:28 p.m.)

ACKNOWLEDGMENT OF DEPONENT

I, W. NEIL EGGLESTON, hereby acknowledge that I have read and examined the foregoing pages of my deposition and that:

(Check appropriate box.)

( ) the same is a true, correct and complete transcription of the answers given by me to the questions therein recorded.

( ) except for the changes noted in the attached Errata Sheet, the same is a true, correct and complete transcription of the answers given by me to the questions therein recorded.

_____ _____

Date Signature of Witness

Subscribed to and sworn before me.

this _____ day of _____, 19___

_____

Notary public in and for the

My commission expires:

Certificate of Reporter)

United States of America) ss.

District of Columbia)

I, CRAIG L. KNOWLES, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to print under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken and, further, that I am neither a relative nor an employee of any attorney or counsel employed by the parties thereto nor financially or otherwise interested in the outcome of this action.

Witness my hand this 4th day of November, 1995.

_____

Notary Public in and for the District of Columbia.

My Commission Expires November 14, 1999:

DEPONENT W. Neil Eggleston

ERRATA

PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
7	21	Ragoche	Ragovin	Spelling
60	14	and the	and before the	Omission
85	2	if	in	Clarification
100	10	sled	shred	Spelling
109	4	percentage	personal	Clarification
114	1	reviewing	revealing	Clarification

U.S. SMALL BUSINESS ADMINISTRATION

Spotila Ex 3
For ID
gh 11-6-95

FAX TRANSMISSION SHEET

Date: 11/16/93 Time: 11:20 am

WARNINGS: PROTECTED UNDER THE PRIVACY ACT, 5 U.S.C., 552a. Unauthorized Disclosure Prohibited Under Penalty of Law. If Recipient Is Not As Identified On Cover Sheet, Make No Further Disclosure And Telephone Transmitter For Instructions On Return Of Materials.

Be Aware Fax Machines Using Thermal Paper Produce An Unstable Image Which Will Detenorate. Copy Messages Onto Plain Paper Prior To Filing As A Record!!

YOU MUST FILL IN ALL FIELDS

SUBJECT: Capital Management Services Total Pages + Cover = 5

	Person's Full Name	Office, Firm	FAX Number	Voice Number
TO:	Neil Eggleston, Esq. Associate Counsel	Off of the White House Counsel	(202)-456-1647	(202) 456-790
FROM:	John T. Spotila, General Counsel/SBA	SBA/OGC	(202) 205-6846	(202) 205-6713

Optional Message:

ATTENTION RECEIVING PARTIES

Immediately call CHECK **at** (202) 205-6713 **if any FAX transmission is incomplete or if multiple copies are received.**

☐ Check this box if you would like the receiving office to confirm receipt of this Fax Transmission.

When checked the receiving office should fax only this cover sheet back to the transmitting office confirming receipt.

Receiving Office, Firm or Division: _____

Received by: _____ Receipt Date: _____

Receipt Time: _____

EXHIBIT

SBA Form 959 (8-93) Previous Editions Obsolete. This form replaces CO 959.

SBA
U S Small Business Administration

NEWS RELEASE

SBA Number:
For release: November 16, 1993

For more information, contact: Mike Stamler (202)205-6740

STATEMENT ON CAPITAL MANAGEMENT SERVICES INC.

U.S. Small Business Administration (SBA) Administrator Erskine Bowles today released the attached summary of his letter to U.S. Rep. John LaFalce, chairman of the House Committee on Small Business. Chairman LaFalce had asked for background information on Capital Management Services Inc., a Specialized Small Business Investment Company located in Little Rock, Ark.

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

Capital Management Services, Inc.
Information Sheet

Capital Management Services, Inc. ("Capital Management"), was a Specialized Small Business Investment Company ("SSBIC") located in Little Rock, Arkansas.

Capital Management was licensed by the Small Business Administration ("SBA") in 1979, and received total financial assistance of $3.4 million from SBA during the period from September, 1983 through March, 1989. While monitoring Capital Management in the fall of 1992 in connection with a request for additional leverage, SBA began to suspect regulatory violations by the SSBIC. SBA required Capital Management to provide further information about its portfolio of investments, and then in October, 1992 and December, 1992, SBA denied Capital Management's requests for the additional financing.

In the review process, SBA became aware of serious potential regulatory problems relating to Capital Management. Accordingly, SBA commenced an audit of the SSBIC for the 24 month period ending November 30, 1992. As a result of the audit report, issued in March of 1993, SBA referred the case to the Office of Inspector General ("IG") for investigation. The IG, in turn, made a referral to the Federal Bureau of Investigation ("FBI") for further inquiry. SBA officials traveled to Arkansas and met with the FBI and the local Assistant United States Attorney in order to review the records of Capital Management. This joint effort uncovered additional regulatory violations by Capital Management. SBA then moved for and obtained appointment as receiver ("Receiver") for Capital Management pursuant to an Order entered by the United States District Court for the Eastern District of Arkansas, Western Division, on September 15, 1993. (United States of America v. Capital Management Services, Inc., Civil Action No. LR-C-93-646 (Eisele, J.))

The Receivership was instituted for the purpose of administering and controlling Capital Management, making inquiry into regulatory compliance, liquidating all of Capital Management's assets, satisfying the claims of creditors therefrom, and pursuing all causes of action available to Capital Management against third parties. SBA is authorized to act as a receiver of an SSBIC under Section 311 of the Small Business Investment Act of 1958, as amended ("Act"), 15 U.S.C. § 687c.

The following is point by point specific background material:

SSBIC License

Capital Management was issued an SSBIC license by SBA on March 14, 1979 under Section 301(d) of the Act, 15 U.S.C. § 681(d). SSBICs licensed under Section 301(d) of the Act are permitted to fund only those concerns owned by socially or economically disadvantaged persons.

Management

According to SBA's files, Capital Management was operated by David L. Hale, a local Pulaski Municipal Court Judge, since 1980.

Private Capital

As required by Section 302 of the Act, 15 U.S.C. § 682, Capital Management was initially capitalized with $152,500 in "Private Capital", as defined in SBA's regulations ("Regulations") at 13 C.F.R. § 107.3. Please note that the minimum requirement for "Private Capital" has been amended since the time Capital Management was licensed. Subsequently, Capital Management's private paid-in capital increased to $500,500 in March of 1980, to $1,006,310 in June of 1986 and to $1,406,310 in December of 1988.

SBA Leverage

The total amount of SBA financial assistance provided to Capital Management to date is $3.4 million. In accordance with Section 303(b) of the Act, 15 U.S.C. § 683(b), SBA provided financing to Capital Management through the purchase or guarantee of three subordinated debentures issued by Capital Management in the total principal amount of $2,000,000. The three financings were made in November, 1983; September, 1986; and March, 1989. The SBA also provided financing to Capital Management through the purchase of a total face amount of $1,400,000 in preferred stock issued by the Company in three separate financings in March, 1980; May, 1986; and March, 1989. The SBA is authorized to purchase preferred securities of SSBICs pursuant to Section 303(c) of the Act, 15 U.S.C. § 683(c).

Portfolio Financings

Capital Management made numerous financings to individual small business concerns. These SBIC financings were not SBA approved investments, since SBA does not select or approve small businesses which SBICs choose to finance. Individual financing decisions are made by the SBICs, without prior consultation with SBA. SBA is not in a position at this time to give details about individual financings by Capital Management.

As Receiver, SBA is marshalling all of Capital Management's assets and property and gathering and reviewing all of its documents, books, records and files. Since its appointment as Receiver, SBA has been operating pursuant to a liquidation directive. All of Capital Management's individual financings are being reviewed, with more information being obtained daily.

U.S. SMALL BUSINESS ADMINISTRATION

Spotila Ex 4
FOR ID
ge 11-6-95

FAX TRANSMISSION SHEET

Date: 11-16-93 Time: 3:20 P.M.

WARNINGS: PROTECTED UNDER THE PRIVACY ACT, 5 U.S.C., 552a. Unauthorized Disclosure Prohibited Under Penalty of Law. If Recipient Is Not As Identified On Cover Sheet, Make No Further Disclosure And Telephone Transmitter For Instructions On Return Of Materials.

Be Aware Fax Machines Using Thermal Paper Produce An Unstable Image Which Will Detenorate. Copy Messages Onto Plain Paper Prior To Filing As A Record!!

YOU MUST FILL IN ALL FIELDS

SUBJECT: CAPITAL MANAGEMENT Total Pages + Cover = 5

	Person's Full Name	Office, Firm	FAX Number	Voice Number
TO:	NEIL EGGLESTON, ESQ	OFFICE OF WHITE HOUSE COUNSEL	202-456-1647	202-456-74
FROM:	JOHN T. SPOTILA, ESQ	S.B.A	202-205-6946	202-205-671

Optional Message:

ATTENTION RECEIVING PARTIES

Immediately call CHERYL at 205-6713 **if any FAX transmission is incomplete or if multiple copies are received.**

☐ Check this box if you would like the receiving office to confirm receipt of this Fax Transmission.

When checked the receiving office should fax only this cover sheet back to the transmitting office confirming receipt.

Receiving Office, Firm or Division: _____

Received by: _____ Receipt Date: _____

Receipt Time: _____

EXHIBIT
Eggleston
EX. 11-4-95

SBA Form 959 (8-93) Previous Editions Obsolete. This form replaces CO 959.

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416
(202) 205-6642

General Counsel

November 16, 1993

HAND DELIVERED

Neil Eggleston, Esquire
Associate Counsel
Office of the White House Counsel
The White House
Washington, DC 20416

Dear Neil:

Enclosed is a copy of Erskine's letter yesterday to Chairman LaFalce (with confidential attachments).

Sincerely,

John T. Spotila

JTS/s

Attachments



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

NOTICE

The information contained herein has been determined to be confidential in nature and therefore not releasable to unauthorized parties. Disclosure of this information may violate Federal law (e.g., Privacy Act of 1974, the Right to Financial Privacy Act of 1978, and 18 U.S.C. § 1905). Utmost discretion should be exercised.

November 15, 1993

Honorable John J. LaFalce
Chairman, Committee on Small Business
Congress of the United States
House of Representatives
Washington, DC 20515-6315

Re: Capital Management Services, Inc.

Dear Chairman LaFalce:

I am pleased to provide the information you requested on November 4, 1993, regarding Capital Management Services, Inc. ("Capital Management"), a Specialized Small Business Investment Company ("SSBIC") located in Little Rock, Arkansas.

As general background, Capital Management was licensed by the Small Business Administration ("SBA") in 1979, and received total financial assistance of $3.4 million from SBA during the period from September, 1983 through March, 1989. While monitoring Capital Management in the fall of 1992 in connection with a request for additional leverage, SBA began to suspect regulatory violations by the SSBIC. SBA required Capital Management to provide further information about its portfolio of investments, and then in October, 1992 and December, 1992, SBA denied Capital Management's requests for the additional financing.

In the review process, SBA became aware of serious potential regulatory problems relating to Capital Management. Accordingly, SBA commenced an audit of the SSBIC for the 24 month period ending November 30, 1992. As a result of the audit report, issued in

March of 1993, SBA referred the case to the Office of Inspector General ("IG") for investigation. The IG, in turn, made a referral to the Federal Bureau of Investigation ("FBI") for further inquiry. SBA officials traveled to Arkansas and met with the FBI and the local Assistant United States Attorney in order to review the records of Capital Management. This joint effort uncovered additional regulatory violations by Capital Management. SBA then moved for and obtained appointment as receiver ("Receiver") for Capital Management pursuant to an Order entered by the United States District Court for the Eastern District of Arkansas, Western Division, on September 15, 1993. (United States of America v. Capital Management Services, Inc., Civil Action No. LR-C-93-646 (Eisele, J.))

The Receivership was instituted for the purpose of administering and controlling Capital Management, making inquiry into regulatory compliance, liquidating all of Capital Management's assets, satisfying the claims of creditors therefrom, and pursuing all causes of action available to Capital Management against third parties. SBA is authorized to act as a receiver of an SSBIC under Section 311 of the Small Business Investment Act of 1958, as amended ("Act"), 15 U.S.C. § 687c.

The following is a point by point response to the specific inquiries in your letter:

SSBIC License

Capital Management was issued an SSBIC license by SBA on March 14, 1979 under Section 301(d) of the Act, 15 U.S.C. § 681(d). SSBICs licensed under Section 301(d) of the Act are permitted to fund only those concerns owned by socially or economically disadvantaged persons.

Ownership

According to SBA's files, Capital Management is currently owned by David L. Hale 82%, Linda Sue Hale (David Hale's wife) 9% and Hazel Dennis (David Hale's sister) 9%.

Private Capital

As required by Section 302 of the Act, 15 U.S.C. § 682, Capital Management was initially capitalized with $152,500 in "Private Capital", as defined in SBA's regulations ("Regulations") at 13 C.F.R. § 107.3. Please note that the minimum requirement for "Private Capital" has been amended since the time Capital

Management was licensed. Subsequently, Capital Management's private paid-in capital increased to $500,500 in March of 1980, to $1,006,310 in June of 1986 and to $1,406,310 in December of 1988.

SBA Leverage

The total amount of SBA financial assistance provided to Capital Management to date is $3.4 million. In accordance with Section 303(b) of the Act, 15 U.S.C. § 683(b), SBA provided financing to Capital Management through the purchase or guarantee of three subordinated debentures issued by Capital Management in the total principal amount of $2,000,000. The three financings were made in November, 1983; September, 1986; and March, 1989. The SBA also provided financing to Capital Management through the purchase of a total face amount of $1,400,000 in preferred stock issued by the Company in three separate financings in March, 1980; May, 1986; and March, 1989. The SBA is authorized to purchase preferred securities of SSBICs pursuant to Section 303(c) of the Act, 15 U.S.C. § 683(c).

Portfolio Financings

You have requested details regarding Capital Management's financings to individual small business concerns. These SBIC financings were not SBA approved investments, since SBA does not select or approve small businesses which SBICs choose to finance. Individual financing decisions are made by the SBICs, without prior consultation with SBA. We are not in a position at this time to give you details about individual financings by Capital Management.

As Receiver, SBA is marshalling all of Capital Management's assets and property and gathering and reviewing all of its documents, books, records and files. Since its appointment as Receiver, SBA has been operating pursuant to a liquidation directive. New financings are not being made by Capital Management. The Receiver has retained a Principal Agent, Cecilia R. Seay, who is experienced in SBIC liquidation, has served as an agent for other receiverships, has interviewed and deposed numerous individuals, and has general awareness of SBIC regulations and corporate duties in the State of Arkansas. We are in the process of retaining accountants to follow the flow of funds from Capital Management. All of Capital Management's individual financings are being reviewed, with more information being obtained daily. Once the information is available, we will review it to assess what details we can make available to you.

As additional background, I am attaching further information relating to Capital Management. If you like, SBA representatives

can meet at a mutually convenient time with Tom Powers, Jeanne Roslanowick, or any other of your designated representatives to clarify this information.

I look forward to working closely with you and the Small Business Committee as we proceed.

Sincerely,

Erskine B. Bowles
Administrator

Attachments

EBB/s

Spotila Ex 5
For ID
9 R 11-6-95

THE WHITE HOUSE
WASHINGTON

November 20, 1993

John T. Spotila, Esq.
General Counsel
U.S. Small Business Administration
Washington, D.C. 20416

Dear John:

Enclosed please find the attachments to the public report from Administrator Bowles to Chairman LaFalce, House Committee on Small Business, that the Small Business Administration provided earlier this week. In view of the fact that the attachments themselves, although delivered to the House committee, were not made public, I am returning them.

Very truly yours,

W. Neil Eggleston

W. Neil Eggleston
Associate Counsel to the President
(202) 456-7901

EXHIBIT
Eggleston 3
RK 11-4-95

DEPOSITION OF LLOYD N. CUTLER
IN RE: S. RES. 120

MONDAY, NOVEMBER 6, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of LLOYD N. CUTLER, called for examination pursuant to notice of deposition, at 11:15 a.m. in Room 534 of the Dirksen Senate Office Building, before BRENDA M. SMONSKEY, a Notary Public within and for the District of Columbia, when were present:

MICHAEL P. O'CALLAGHAN, ESQ.
Majority Associate Special Counsel
MICHAEL CHERTOFF, ESQ.
Majority Special Counsel
NEAL E. KRAVITZ, ESQ.
Minority Principal Deputy Special Counsel
RICHARD BEN-VENISTE, ESQ.
Minority Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

ROGER M. WITTEN, ESQ.
GAIL BERNSTEIN, ESQ.
STEVEN H. SACHS, ESQ.
Wilmer, Cutler & Pickering
2445 M. Street, NW
Washington, DC 20036–1420
On behalf of the Deponent.

CONTENTS

WITNESS	EXAMINATION
Lloyd N. Cutler	
by Mr. Chertoff	3
Errata	7159

3

PROCEEDINGS

Whereupon,

LLOYD CUTLER

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. CHERTOFF:

Q Mr. Cutler, before we proceed, I am just going to make some preliminary observations about the nature of this deposition. The deposition is conducted pursuant to Senate Resolution 120, which establishes a special committee to conduct an investigation involving Whitewater Development Corporation and a number of related matters.

One of those matters has to do with the handling of certain transcripts in connection with an investigation conducted last summer by the Office of Government Ethics and the Inspectors General of the RTC and Treasury, and that's going to be what the subject of this deposition is focused on.

The deposition is in advance of a public hearing that will actually begin, as far as I can

4

tell, tomorrow. I would say there is a substantial likelihood you will be asked to testify. My estimate is that would be on Thursday morning.

We will proceed by way of my asking you a series of questions which you are obliged to answer under oath. If you don't understand a question, please let me know and I will try to clarify it. If you need a break to talk to your attorney or for any other reason, let us know. We will go off the record.

There will be a record of questions and answers here taken by the stenographer which will be treated as committee confidential until the hearings begin. At that point, some or all of it may become public. In any event, in due course the entirety of the deposition will become part of the public record.

You will be given an opportunity as soon as the transcript is prepared to come in with your counsel to make corrections, and given the time frame, you will receive a copy of the deposition to use in your preparation as soon as it is prepared, on

5

the condition that you agree not to share the deposition itself with anybody else.

A We have an opportunity to correct the transcript?

Q Yes, as soon as it is available. Frankly, plan on coming in tomorrow. We get daily copy. I would imagine it would be available tomorrow morning sometime. Given we are talking about a Thursday start date, I would not hesitate.

MR. BEN-VENISTE: I don't think it will be necessary for Mr. Cutler to come here to do that. I think we can provide it to him tomorrow.

MR. CHERTOFF: Yes. You will get a copy anyway. I would plan to attend to it tomorrow.

You are represented by counsel, and just for the record, if we can get the identification of counsel who will be speaking.

MR. SACHS: Steven Sachs, Roger Witten and Gail Bernstein, all of the law firm of Wilmer, Cutler & Pickering.

BY MR. CHERTOFF:

Q Obviously, if objections are made, let us

6

hash it out on the record and then you can go ahead and answer.

There are two circumstances under which you might be instructed not to answer a question. One is on the ground of privilege, the other is on the ground that the question would be beyond the scope of the resolution.

If either of those instructions comes up during the course of the deposition, let us try to work it out on the record. If we are unable to do so, then if you would withhold your answer, ultimately the Chairman of the Committee is the final arbiter with respect to such objections.

Is there anything that I have said to you or anything else in connection with the deposition that is unclear or that you would like to ask me about?

A Nothing.

MR. SACHS: I want to put on the record, Michael, as I put on the record in Ms. Sherburne's deposition, we are aware there have been discussions between the White House and your staff and the

7

committee with respect to privileges, the scope of privileges, et cetera. We think we understand the general parameters.

It should be understood that Mr. Cutler is not authorized to waive any privileges that exist that pertain to the White House, and anything he says here today should not be construed as a waiver.

One other preliminary, and that is that it is hot in here. Is there some way, among your awesome powers --

MR. CHERTOFF: Now you are way beyond my powers.

BY MR. CHERTOFF:

Q Mr. Cutler, when did you become appointed counsel to the President in 1994?

A I believe the official date was the 10th of March, but I actually began working on White House counsel matters I think by the 4th of March.

Q You came aboard as a special government employee?

A That is correct, without compensation.

Q What was your exact title?

8

A My title was not counsel to the President; it was special counsel to the President. In part because Mr. Nussbaum wished to stay on until the end of April, and I decided since I was going to be only a special government employee, it would be best to retain the title of special counsel rather than the formal counsel to the President.

Q When Mr. Nussbaum left, did you or did anyone else come to occupy the formal title of counsel to the President during your tenure as special counsel?

A No.

Q Did you bring any lawyers aboard with you at the time or shortly after the time you began working in the White House?

A Well, since one of my responsibilities was to conduct my own investigation of the so-called White House-Treasury contacts, I brought in two of my former partners, litigating partners, whom I knew and trusted, one of whom was Jane Sherburne, who I brought in as a special government employee from the law firm.

9

The other was Sheila Cheston, who was already the Deputy General Counsel of the Air Force. She was deputized or secunded over, whatever the right term is, to assist me. But that did not happen immediately. That was in the course of the spring.

Q When did you first learn that you would be asked to undertake some kind of internal review or investigation regarding Treasury-White House contacts?

A During the series of interviews I had with Mr. McLarty and the President when I was recruited. I thought I had made them an offer they couldn't accept when I said I would only stay for the 130-day period.

Q And in the course of the discussion, they raised the issue of this internal investigation as a subject?

A As one of the duties, yes.

Q What was your understanding of what was to be investigated at the time that these discussions initially occurred?

A Well, as you know, Mr. Nussbaum had

10

resigned over the preceding weekend in the midst of the initial disclosures about the Treasury-White House contacts that appeared in the press, and it became one of my duties to look into those contacts and to advise the President as to whether there were any improprieties and what actions, if any, would be required.

Q Did you have any discussions with the President or with Mr. McLarty during this period that you described as when you were being recruited concerning the manner in which you would conduct this internal review or investigation?

A Not in any specific way, no. We were aware, of course, that there was an independent counsel at this point, Mr. Fiske, and that he might very well be looking into the same matters. That became clear in the course of the next month or two.

Q When you came aboard, did you go about starting a preparation for conducting this internal review?

A Not immediately. In the next month or so I did, yes.

11

Q How did you go about doing that?
A The first thing I did was to recruit the two people I mentioned who had not previously been connected with the White House in any way, and I also had extensive discussions with Joel Klein, the deputy counsel, who I think had come on board only the previous December or something like that. He would not have been involved in that context with the minor exception of the level of contact with which you are familiar.
Q Did you have any discussion during the period of preparation for conducting this review for setting up an ethics wall or some kind of a restriction between the attorneys in the office who were conducting this internal review under you and the other attorneys in the White House counsel's office?
A We did not set up a formal wall, but all of the work was done by the two new people I had recruited and the staff that they built up who were also new people, and with Mr. Klein.
Q And where did this staff that you brought

12

in have its offices?
A In the Executive Office Building.
Q Where in relation to the Offices of the General Counsel?
A Well, you know the setup over there very well, I assume.
Q I don't. In any case, if I did, the record doesn't know.
A Only the counsel and the deputy counsel have offices in the west wing of the White House on the second floor. Everyone else attached to the counsel staff has his or her office in the EOB.
Q Did Ms. Cheston, Ms. Sherburne and the staff they brought in and assembled share office space with the other members of the White House counsel staff?
A I believe they had a separate room. We had great difficulty finding rooms for them, the White House being as crowded as it is. But I believe they had a separate locked room of their own.
Q Am I correct that at the time that this internal review or the preparation for this internal

13

review began and during the course of the review, the regular members of the White House counsel staff, including individuals such as Mr. Sloan and Mr. Eggleston, were reporting to you?

A Yes.

Q And reporting to --

A And to Mr. Klein.

Q And to Mr. Klein. So that at the time that you were supervising the internal review, you were also continuing to supervise the ongoing work of Mr. Eggleston and Mr. Sloan and Mr. Klein himself?

A Yes.

Q Did you discuss with the President or Mr. McLarty either after you arrived -- during the recruitment period or after you arrived whether the internal review should be conducted and supervised by somebody who did not have an ongoing working relationship with the people in the White House, the people in the regular part of the White House counsel's office?

A You mean did I have a discussion as to whether someone other than myself should be in

14

charge?

Q Or, alternatively, whether you ought not to have an ongoing relationship with the members of the White House counsel's office who were themselves going to be called as witnesses?

A No, we did not have any such discussion and I did not think any such discussion was necessary or appropriate.

Q In your judgment, you saw no difficulty in your both supervising people like Mr. Eggleston and Mr. Sloan and Mr. Neuwirth and other members of the White House counsel's office at the same time that you were supervising the attorneys who would be examining them as witnesses?

A No. This was not a criminal investigation. These were respected, trustworthy members of the White House legal staff, and I could hardly perform the function of being the White House counsel and advising the President if I had to either fire them or cut myself off from my connection with them.

Q Did you suggest --

15

A Who would have supervised them other than myself?
Q Did you suggest to the President or Mr. McLarty that perhaps the fact-gathering, the interviewing or the deposing of White House counsel personnel should be undertaken by the Inspectors General of Treasury and the RTC, who were conducting a parallel investigation?
A Well, the Treasury Inspectors General were conducting an investigation for the Secretary of the Treasury into the propriety of the very same contacts. They were looking at the propriety of the behavior of the Treasury officials.
The President is, after all, the President, and the President is entitled to look into the propriety of the behavior of his immediate White House staff. It was obvious we could not employ the Department of Justice for that purpose, and it would be odd to me to employ the Treasury Inspector General for that purpose except for factfinding convenience.
Given the very short timetable that ultimately developed, we had between July 1st, when

16

we were allowed to begin our investigation by Mr. Fiske, and July 26th, I think it was, when I actually had to testify.
Q When did you become aware of the fact that the Treasury and RTC Inspectors General would be conducting some factfinding in connection with the Treasury investigation?
A Not until approximately the 1st of July.
Q Well, were you aware of the initial announcement that Mr. Bentsen made concerning the fact that he had asked the Office of Government Ethics to proceed with an investigation of the Treasury side?
A Yes, I was certainly aware of that at the time. If I recall the dates expressly, it was not until Mr. Fiske released both the Treasury and the White House to conduct their own investigations, and that was late in June, quite late in June.
Q Did you consider having the Office of Government Ethics review the actions of White House counsel's personnel?
A Yes, I did. I knew and Secretary Bentsen

17

learned that the Office of Government Ethics has no factfinding capability of its own. But I did take steps to ask the Office of Government Ethics if on the basis of the facts that we presented to them they would review our conclusions as to whether there had been any ethical improprieties, and they did so.

Q When you say review your conclusions, do you mean furnish you with a report along the lines of the report that they furnished to the Secretary of the Treasury?

A We wanted them to furnish such a report, but they said, having been asked by the Secretary of the Treasury to prepare such a report for him, they would not have time to do a full report for us.

But they were willing to review the conclusions we had reached, the ethical conclusions we had reached based on our factfinding and the other information we had available and to let us know whether they disagreed with any of those conclusions. That is reflected in the report itself.

Q Did you consider asking the Office of

18

Government Ethics to broaden their examination and their use of the Inspectors General personnel to conduct factfinding of the White House counsel's office personnel so that they could furnish a report not only to the Secretary but to you and to the President?

A Well, we did in the end, as you know, make use of the investigations being conducted by the Treasury Inspectors General in the sense that we gave up or we did not ourselves interview all of the Treasury people. We only interviewed one or two of the Treasury people. We relied on the investigations or I should say the depositions being prepared by the Treasury Inspectors General.

So far as the rest of the Treasury people were concerned -- and of course we made our own people, White House people, available to the Treasury Inspectors General.

Q When did you decide to rely in part on the depositions of the Inspectors General in terms of conducting your own review?

A It would have been early in July.

19

Remember, the time frame was compressing on us all the time. We thought that and Mr. Fiske's people led us to believe that he would be able to conclude his own investigation and let us begin the ethical investigation much earlier than the beginning of July.

At the same time, the committee was organizing itself, and it was scheduling hearings to begin the last week of July. So, the time kept getting shorter and shorter.

Once Secretary Bentsen had come to the conclusion that he would have his factual investigation of the Treasury people done by the Treasury Inspectors General, we thought that gave us an opportunity to save time and work and that we would not have to interview every Treasury witness.

Q When did you learn specifically that the Secretary had decided that the Inspectors General should be the factfinders working to produce the facts for the OGE report?

A Well, it must have been close to the beginning, a few days into July. As you know, the

20

Secretary -- Secretary Bentsen originally asked the OGE to conduct the investigation, and since they had no factfinding capability, it was arranged, and whether it was OGE's suggestion or the Treasury's suggestion, I don't know, that the Treasury Inspectors General would do the factfinding investigation.

Q Wasn't that arranged sometime in the spring of 1994?

A Well, I don't see how it could have been. We were already exchanging documents in the spring, in May of 1994. But we were not allowed to begin the actual interviewing of witnesses.

Q I understand you weren't allowed to begin it. But wasn't the decision to have the Inspectors General be the factfinders for OGE a decision that was reached before June of 1994?

A I don't really recall. If you have something to show me that would refresh my recollection, I would like to see it.

Q By the way, while I'm seeing if we have anything to refresh your memory, did you personally

participate in deciding and conducting the White House internal review?

A I certainly supervised it, yes.

Q Did you delegate the responsibility to somebody else or did you make a decision to become personally involved in the details?

A I was personally involved in dealing with Secretary Bentsen and Mr. Knight, and I met virtually every day with Ms. Cheston and Ms. Sherburne to go over the developments of that day.

Q Were you satisfied that you were fully familiar and aware of all the relevant developments in the internal review?

A I don't know what you mean by that question. I was satisfied that I had been informed of all I needed to know and had taken part in all of the decisions in which I needed to take part. I had great confidence, based on past working experience with Ms. Sherburne and Ms. Cheston. We worked together more or less as senior partners and junior partners in the law firm.

Q And on a daily basis you conferred with

them about the progress of the investigation?

A Or lack of progress, yes.

Q Am I correct also that you were involved, to your knowledge, in all the decisionmaking regarding how the investigation would proceed, the internal investigation would proceed?

A When you say "all the decisionmaking," I think you go too far. I much prefer the analogy of the lead partner and the other litigating partners in the law firm.

Q I don't know that that is helpful to people who are going to be reading the record. Let me be a little -- let's try to put it in lay terms.

MR. SACHS: Who else but lawyers is going to read the record anyway?

MR. CHERTOFF: Not all of our senators are lawyers.

MR. BEN-VENISTE: I wonder whether that modifies Steve's question.

MR. SACHS: I was going to say that.

BY MR. CHERTOFF:

Q With respect to decisions about the manner

in which the interview or the review would proceed, were you involved in those decisions?

A Not in every detail as to the order of the interviews or what specific questions would be asked, no.

Q With respect to the general issue of who would be interviewed, the manner in which interviews would occur, were you involved in those decisions?

A Yes. I was involved in the decision that we would interview everyone whose name had been mentioned in connection with these contacts or whose name we learned of as possibly having had a contact. I was involved in the decision that we would conduct our own interviews, not on the basis of sworn depositions, but as interviews.

Q Now, in June of 1994, Mr. Fiske was still conducting his investigation; correct?

A He had not yet filed his report, that is correct. He had not reached his conclusions.

Q So, in June of 1994, you had not yet begun the process of conducting your own interviews; correct?

A I believe that is true, yes. It is true, yes.

Q Am I correct from your earlier testimony that you began to feel that there was as of June 1994 time pressure if you were to complete your review before the anticipated beginning of Senate hearings?

A Yes.

Q When did you learn that Senate hearings would begin in the last week of July?

MR. WITTEN: House hearings.

MR. CHERTOFF: Congressional hearings.

THE WITNESS: Well, I cannot pinpoint that. There were -- both committees were preparing for hearings. The dates may have shifted around. But we certainly knew reasonably early in July the dates that had finally been set. The two committees, as you may recall, had to collaborate with one another to set dates, since they were interviewing the very same witnesses.

BY MR. CHERTOFF:

Q In June of 1994, did you discuss with anybody that was working with you at the White House

25

on this internal review different ways in which you might speedily accomplish the fact development that you needed in order to complete your internal review?
A Yes.
Q Did you talk about different ways in which you might get information from witnesses?
A Yes.
Q Did you talk about how you would get information from Treasury witnesses?
A Well, we discussed internally among ourselves a number of possibilities, such as interviews of Treasury witnesses, attending Treasury interviews of Treasury witnesses, and whenever it was that the plan of the Inspectors General to have depositions, whenever that occurred, that we could accomplish our task if we had access to those depositions.
Q In June of --
A But we need not then attend the actual depositions themselves or interviews themselves.
Q In June of 1994, did you ask Ms. Sherburne or Ms. Cheston or anyone else working for you to

26

ascertain how the Treasury Department was going to conduct its fact development from its witnesses?
MR. SACHS: Before you answer, Lloyd, are you limiting the question to June of '94?
MR. CHERTOFF: As of June of '94.
BY MR. CHERTOFF:
Q As of June of 1994, had either you yourself or someone working at your direction contacted anybody at Treasury to find out how they were going to be developing facts from Treasury and RTC witnesses?
A Yes. Ms. Sherburne, and I believe Ms. Cheston, were having conversations of that kind with Mr. Knight, members of Mr. Knight's staff and others, who as the Inspectors General came on board, others who were working with or for the Inspectors General.
(Witness conferred with counsel.)
BY MR. CHERTOFF:
Q Was there something you wanted to amplify?
A I'm not sure I made clear, I did refer to it once, but we had received Mr. Fiske's permission a

27

month or two earlier, I believe in May, or just before May, to look at the Treasury documents which the Treasury had supplied to Mr. Fiske on this subject and to offer to the Treasury our documents which we had supplied to Mr. Fiske on this subject.

Those arrangements were recorded in writing, and I also recall that in our letter asking to see the Treasury documents, we made clear we did not wish to see any documents relating to the substance of the Madison Guaranty matters or the criminal referrals.

Q Why was that? Why didn't you want to see any documents relating to the substance of the Madison matters or the criminal referrals?

A Because this was a criminal referral which by that time had given rise to a debate as to its confidentiality, and there were discussions, as you know, debates, as you know, as to whether it was proper for anyone in the White House to know those details.

Q So is it fair to say that in your own mind you were sensitive to making sure that in the course

28

of this review you didn't gain hold of the confidential information which was in fact the subject of what you were reviewing?

A The substance of that information, yes.

Q Let me ask you, in June of --

A I'm sorry. That's not quite right. When you say that we were reviewing, we were not reviewing the substance of the Madison Guaranty referrals. We were reviewing the contacts between the Treasury officials and the White House officials relating to the fact that there had been referrals and press inquiries.

Q And you understood that the reason the contacts were being reviewed was because of the concern or the allegation that confidential information about the referrals had been transmitted to the White House?

A That was certainly one of the charges that appeared in the press, yes. When you say "the reason," I don't think that is correct.

Q So, given that that was at least one of the reasons that contacts were being looked at, is it

29

fair to say that you understood that it was important that in conducting your own review you not in fact cause further confidential information to be passed from RTC to the White House?

A Correct.

Q Now, did you and Ms. Sherburne meet with Stephen Potts in the second week of June 1994?

A I believe it was the third week of June 1994. But we met with a number of officials of the OGE, including Mr. Potts.

Q And you attended that meeting?

A Yes.

Q And Ms. Sherburne attended the meeting?

A Yes.

Q Did she prepare talking points for the meeting?

A For the OGE meeting? I don't recall specifically, but she may well have.

Q Let me show you S 6867 and 6868 for identification and ask you if you recognize these.

(Witness examined the document.)

A Yes.

30

Q Did you see these talking points before your meeting with Mr. Potts?

A I imagine I did, yes.

Q Was it your practice to work from talking points in having a meeting like this?

A It would depend. I would not necessarily have the talking points in front of me.

Q Now, the meeting itself, did the meeting -- let me ask you first, do you remember exactly when the meeting with Mr. Potts occurred?

A No. But I keep records. It would appear in my diaries. My recollection, from preparing myself for this interview, was it was more like June 21st than the second week of June, but I may be wrong.

Q Let me clarify. S 6899, for identification, is that a copy of your diary for June 20th, Monday?

A Yes.

Q And is that the meeting in which you had the discussion for which you had prepared through the talking points 6867 and 6868?

A That's the meeting I had for which these talking points were prepared, presumably by Jane or Sheila or both.

Q Would you agree with me -- and if you have difficulty, I can show you the page itself -- would you agree with me that at least as of June 20th, if not as of June 10th, when the talking points were prepared, you were aware that the Inspectors General had been asked to conduct factfinding that would be reported to OGE on which OGE would rely?

A Yes.

Q Did you discuss in your meeting with Mr. Potts and others from OGE whether you could gain access to that factfinding information from the Inspectors General for purposes of your own review?

A I do not recall whether we discussed that with them. This was a subject that we were discussing with the Treasury.

Q With whom at Treasury was this being discussed as of mid-June?

A Once again, I can't be precise as to dates. But if the arrangements for the Inspectors

General to do the depositions had already been made by that time, my discussions were with Secretary Bentsen and Edward Knight.

Q Did you have a conversation with Secretary Bentsen before your meeting with Mr. Potts on the 20th of June concerning how you would get information from the Inspectors General?

A I had conversations with Secretary Bentsen in May and I think early in June about the need for collaboration to economize in time to meet our schedule and the need to exchange information and the various methods which that might be done.

Q When was the first time you had such a conversation with Secretary Bentsen?

A Once again, my telephone records would show, but it was probably in about this time in June or perhaps a little bit before. We had had previous conversations in May, as I mentioned, about collaboration on the exchange of documents.

Q I want to be sure I'm clear. The conversations in May had to do with collaboration on exchange of documents?

33

A I believe so. That's my recollection.
Q What do you mean by "collaboration on exchange of documents"?
A Mr. Fiske, even though he had not yet completed his investigation or his report, had cleared us and the Treasury to exchange documents with one another. And it was a matter of identifying documents and exchanging letters establishing the ground rules for that exchange.
Q And was it in June that the issue of, as you say, collaborating on the witness interview portion or witness deposition portion of these investigations came up between you and Mr. Bentsen?
A I think so.
Q How did it come up? Who brought it up?
A I brought it up.
Q Did you bring it up in a phone conversation or in a meeting?
A I had one luncheon meeting with Mr. Bentsen, which is about the time of approximately June 20th or 21st, and I had four or five telephone conversations with him. In addition, he was a

34

frequent attendant at White House meetings, some of which I was also present on other subjects, and we probably had a few conversations in the White House corridors or in intervals during those meetings.
Q Let me show you S 7844 and ask you if this is a page from your calendar that indicates you in fact had a luncheon meeting with Mr. Bentsen on June 21st.
A That's correct.
Q This was the day after you had your discussion with Mr. Potts?
A Right.
Q And was the purpose of this lunch specifically to discuss the investigation that was going to be conducted by OGE and the investigation that you wanted to conduct?
A Yes.
Q Now, did you prepare -- how did you prepare for that lunch?
A I believe talking points were prepared for me on that meeting as well.
Q Did you direct -- who prepared the talking

35

points?
A It had for be either Ms. Sherburne or Ms. Cheston or both.
Q Did you direct either of them to prepare for specific issues you wanted to raise with the Secretary?
A I don't recall. Remember, we were meeting every day, Ms. Sherburne, Cheston and I, and they had a very good idea -- we each had a good idea of what we wanted. The fact is, there was hardly any discussion of the subject at that lunch.
Q What was discussed at the lunch?
A That was the day or the day immediately after the dollar had its big fall. Mr. Summers, Larry Summers, who I think was then Undersecretary of the Treasury, came in to impart some news to Mr. Bentsen about the big fall.
He was obviously much more interested in that subject than any other subject, and he was invited by Secretary Bentsen to stay for the lunch, and the discussion during lunch was at least 90 or 95 percent about the dollar or what should do, whether

36

the U.S. should or should not intervene in the markets.
Q Before or after Mr. Summers appeared or during Mr. Summers' presence at the lunch, was there some discussion concerning how this would be handled?
A Yes, there was a brief discussion.
Q Did you raise the issue, first of all, of getting information from Treasury witnesses?
A Well, it was -- that was a subject that we had discussed previously, and I believe it is in the talking points, and the chances are, I did bring it up, yes. But I have no specific recollection of how much of what I wanted to take up at that meeting we actually did take up.
Q Well, to the extent you can recall any discussion about it, did you ask Mr. Bentsen about collaborating and getting the information gained by the Inspectors General from Treasury witnesses, having that furnished to the White House?
MR. WITTEN: At that lunch?
MR. CHERTOFF: At that lunch.
THE WITNESS: I believe either before

37

Mr. Summers came in or at the very end of the lunch, yes.

BY MR. CHERTOFF:

Q What did the Secretary say?

A He agreed in principle with the idea that we should share and collaborate, and I believe it was left that I would work it out with Mr. Knight, his special assistant, or that Jane and Sheila would work it out with Mr. Knight or other people in the Treasury.

Q When you say collaborate, was it your suggestion that there actually be a joint investigation by your staff and the Inspectors General of these matters?

A No, but that there would be a division of labor on interviews, making people available, and that we would have -- for the people we did not interview, we would have the benefit of the Treasury transcripts or whatever other kind of factfinding report the Treasury people had.

Q Was it your desire to have the work product of the Inspectors General only for those witnesses

38

that you were not going to interview yourselves?

A It is not work product. It is a deposition.

Q Was it your desire to have -- did you know at this point in time there were going to be depositions?

A I must have known, based on these talking points.

Q Was it your desire to have the depositions from the Inspectors General only with respect to those witnesses that you and your staff were not going to interview?

A I think we wanted to see all of them. In the end, we actually interviewed only Mr. Altman and Mr. Steiner. We spoke to Ms. Hanson's attorney.

Q You knew as of June 21st certainly that you were going to interview White House personnel for purposes of your review; correct?

A Yes.

Q As of June 21st, did you know or believe that the Treasury and RTC Inspectors General were going to depose White House witnesses?

39

A We offered them -- they asked if they could depose White House witnesses, and we agreed to that.
Q As of June 21st, did you want to have the depositions of those White House witnesses furnished to the White House?
A You state your questions as of June 21st. I find it very hard to deal with that. Certainly that is what we wanted. Since I had to make a report, we had to be sure that what the White House witnesses had said to us was consistent with what they said to other people, in particular, what they said to the Treasury people.
I had to reflect -- at least I felt the need to reflect in my report any differences in testimony that existed, either inconsistencies in what one or more White House personnel had said or inconsistencies between what they said and what Treasury personnel had said.
Q So, it was part of your -- is it fair to say that it was part of your purpose going into this, even before the actual --
MR. SACHS: Into?

40

BY MR. CHERTOFF:
Q Into this investigation. Even before the actual process of factfinding began to be able to have access to what White House witnesses were telling Treasury, so you could compare that with what they were telling you?
A In part. To be sure that the facts as I was going to report them were as accurate as I could make them.
Q I want to direct your attention to one of the pages of the talking points, S 7387, where it says "internal review." There is a paragraph -- I will show this to you, but I will also read it to you.
It says "We understand Ellen Kulka has raised an objection to White House review of Treasury documents out of a concern that those documents include what she considers to be RTC documents. Kulka's staff reviewed Treasury documents in anticipation of the White House review and raised limited objections which were honored. We were not permitted to review anything relating to the

41

underlying RTC investigation or anything RTC considered privileged. Status of Treasury response to Kulka objection?"

I show it to you and I want to ask you what your understanding was of this element of the talking points.

A My understanding was that the issue under discussion here was not whether we would have access to RTC-generated documents, which we weren't interested in, but whether we would have access to Treasury-generated documents that may have contained references to information Treasury people had learned from the RTC.

That was Ms. Kulka's problem, and some of her objections had been honored, but there must have been some still pending. We were not aware of what they were.

The last bullet, as I understood it, was simply to inquire as to were we going to get these Treasury documents which Ms. Kulka thought might have references to RTC information contained within them. I believe it was simply a status request.

42

MR. SACHS: Excuse me, Michael. Can I see the rest of the document?

MR. CHERTOFF: I'm afraid all I have are these portions. I don't know if counsel has any more pages.

MR. SACHS: Okay.

THE WITNESS: I remember --

MR. KRAVITZ: I have 7388.

THE WITNESS: We previously made clear with respect to the review -- this is all about Treasury documents. We had previously made clear in Mr. Klein's letter to I think Mr. Knight that while we wanted to see the Treasury documents, as Mr. Fiske had permitted us to do, we did not wish to see anything relating to the substance of the Madison Guaranty matter.

BY MR. CHERTOFF:

Q What was the resolution of this question you asked to Secretary Bentsen?

A Well, remember this is a talking point. Remember that the meeting was 90-95 percent on the dollar. And the chances are very high I never did

43

ask this question to Secretary Bentsen.
MR. CHERTOFF: Mr. Sachs, for completeness, here is the last page.
BY MR. CHERTOFF:
Q Sir, your recollection, Mr. Cutler, is that this particular issue involving Ms. Kulka's objections did not come up during the course of the meeting?
A I do not believe so.
Q Either at the meeting on the 21st or afterwards in the period before you actually began your internal review, when you had phone calls with Mr. Bentsen, did Mr. Bentsen agree with you to furnish transcripts of the Inspectors General depositions for purposes of your use in your internal review?
A Well, my recollection is that an agreement had been reached either at his direction or with his approval and reached at the Ed Knight level that we would make our witnesses available, as had been requested I think by Mr. Cesca, and that we would see the transcripts of the testimony taken by the

44

Treasury Inspectors General of not only our own witnesses but of the Treasury witnesses as well.
My conversations with Mr. Bentsen after that were to express concern that we had not yet received the transcripts.
Q So, your testimony is that as of the time you began the process of your own internal investigation at the beginning of July, you understood there was an agreement that you would be getting all the transcripts of all the Inspectors General depositions?
A That is correct.
Q Was it your understanding that that was --
A Our main interest, of course, was in the depositions of the Treasury people and our own people, of course. There were hardly any contacts with RTC people.
Q Did you restrict yourself in terms of the transcripts you asked for or did you ask for all the transcripts?
A No, except in the sense that we had said earlier we did not wish to see anything relating to

45

the substance of the Madison Guaranty matter.
Q Did you say that with respect to the depositions as well as the documents?
A I don't actually know. That is reported in the letter from Mr. Klein to Mr. Knight written in May.
Q Again, focusing yourself in the period as of the time the actual internal review began -- I want to make sure I'm clear on this -- as of that point in time, it was your understanding that Treasury had committed to furnish the White House with all the transcripts of the depositions conducted by the Inspectors General with respect to every witness?
A Not as of the time the internal review began, because the internal review began with an exchange of documents a month or two earlier.
Q Let me say as of July 1, then, when Mr. Fiske --
A As of July 1, yes, without being pinned down to the precise date.
Q I want to pin it down in this sense. On

46

July 1, you understood that the White House had the green light from Mr. Fiske to conduct its interviewing; correct?
A Yes.
Q And as of that point, was it your understanding that you had a commitment from the Treasury Department to furnish the White House, you and your staff, with transcripts of all of the depositions taken by the Inspectors General of every witness?
A I cannot answer that question precisely. We had had discussions about receiving transcripts, but the actual details were probably worked out by Ms. Sherburne and Ms. Cheston with Mr. Knight and whoever Mr. Knight made available.
Q But as of July 1, did you understand you were to receive all the transcripts?
A I cannot be precise as to whether it was as of July 1 or as of July 5th, but it was about that time.
Q And going into your internal review and in deciding the format in which you would conduct your

47

own factfinding, did you rely upon the fact that you would be getting transcripts of the Treasury witness depositions and the RTC witness depositions in designing your own investigation?

A Certainly of the Treasury depositions. I did not myself have RTC witnesses in mind, as they were not a big thing in my mind.

Q So that in designing your own --

A I believe the only White House-Treasury contacts involving the RTC were the press meetings.

Q In designing your own investigative plan, therefore, at the beginning of July, did you rely on expectations concerning getting the transcripts from the Inspectors General investigation?

A Yes.

Q As of the beginning of July, did you have a concept of the time frame within which you would receive those transcripts?

A Yes. I believe we expected to receive them as soon as they had been -- as soon as the interviews had been completed, the transcripts had been prepared and had been verified.

48

Q So that your understanding was that you would get the transcripts on a rolling basis?

A Yes.

Q From whom did you get that understanding at Treasury?

A I believe we had that understanding from a combination of my talks with the Secretary and Mr. Knight. It may have been also there was such an understanding at a lower level.

Q Did Mr. Bentsen indicate to you as of this point in time, let's say as of the time you were beginning your own investigation, that he was going to place any restriction on your use of these depositions?

A We had some general conversations about the need to manage what I called our collaboration or cooperation in a way that would appropriate to the public and to the investigating committees, general discussion about that. We also, I might add, toward the end of June, I think, I had a press briefing in which I made very clear that we were going to collaborate in this manner.

49

Q And your discussions with Mr. Bentsen were specific to the issue of the need to handle the transcripts in a way that would satisfy public concern and committee concern about the way these investigations were being handled?

A To handle the collaboration in that manner, yes. Whether I got into details with Mr. Bentsen about particular transcripts or when we would receive particular transcripts, I don't know. That is unlikely because he did not immerse himself in this sort of detail.

Q Did anybody from Treasury talk to you personally about any restrictions being placed on your use of the transcripts at the point in time you were beginning to go forward with your interviewing process, the beginning of July?

A My recollection is I had discussions with Mr. Knight about the timing of when we would receive the transcripts in which he indicated to me that there were some objections from within the Treasury at lower levels as to delivering us the transcripts on a seriatim basis.

50

Q When did you have that conversation?

A I cannot be certain, but I had a number of conversations with Mr. Knight throughout July.

Q What did he tell you were the objections?

A Once again, I think in our conversations, it was fairly general. It was the issue of whether before the completion of an Inspector General investigation, it would be appropriate for any of the transcripts to be shown to anybody.

Q What was your response to Mr. Knight?

A That we had to go forward, we were caught in the bind was schedule dates of the House and Senate hearings, we had to complete our investigation and make a report before then and we had to have some sort of access in order to accomplish our particular mission.

Q Did Mr. Knight indicate to you that the objections were coming from the Inspectors General?

A I am not certain, but he may have.

Q Did you discuss with the Office of Government Ethics for whom these Inspectors General depositions were ultimately being prepared, whether

51

they had a view about whether you ought to be getting copies of the transcripts?

A I do not recall myself having such a discussion.

Q Do you know anybody else from the White House who did?

A I don't know.

Q Did it occur to you either to have that discussion or direct someone to have that discussion with OGE?

A No. I thought that was a matter between the Treasury and ourselves.

Q Was it your understanding that the Inspectors General were conducting their investigation under the supervision of the Treasury Secretary or under the supervision of the Office of Government Ethics?

A Well, I think there are ambiguities in what the Secretary has said or what Treasury officials have written in correspondence with the committee.

But it was always my understanding that the Secretary first asked OGE to do the investigation,

52

and when OGE said it could not do the factfinding part, that somehow or other between the Secretary and OGE it was agreed that the Inspectors General would be asked or directed by the Secretary, who had authority over them, to do the factual investigation.

Q You made reference to ambiguities in the testimony or in submissions to Congress. What ambiguities are you referring to?

A On the precise issue of whether it was OGE that made the decision to have the Inspectors General do this or whether it was the Secretary who made that decision after receiving the suggestion from OGE.

Q Putting that to one side, was it your understanding that the Inspectors General were actually being supervised in their investigation by the Treasury Secretary or his designees?

A Well, I don't know what you mean by "supervised." Obviously Inspectors General have a statutory independence to some extent, even from the Secretary of the department. But usually they report to the Secretary.

53

99.9 percent of their investigations relate to personnel other than the Secretary, and they inform the Secretary what they are doing. That's my understanding the way the Inspector General system works.

Q In this case, though, from your conversations with Mr. Bentsen or with Mr. Knight or anybody on their staffs, did you have the impression that the Secretary or his subordinates in Treasury were going to be playing a role in actually supervising the Inspectors General in conducting their investigation?

A No.

Q Was it your understanding that the Inspectors General were supposed to be producing their factfinding in order to support the opinion or the work of the Office of Government Ethics?

A It was my understanding that they would do the factfinding and that the Office of Government Ethics would then give its opinion as to whether on the basis of those facts there had been any violation of ethical standards.

54

Q You understood that among the people whose conduct was being looked at were the general counsel of Treasury; correct?

A Correct.

Q The Deputy Secretary of the Treasury; correct?

A Correct.

Q Did you understand that as of, let's say the beginning of your own work in July, that Mr. Bentsen himself would be a witness or had fact knowledge concerning either contacts or conversations about contacts with senior members of Treasury?

A Well, it was my understanding that he might very well be a fact witness on some subjects, but no more than a witness.

Q I beg your pardon?

A No more than a witness. There was no question that I was aware of as to whether he had engaged in any improper contact between White House and Treasury officials, or had directed it.

Q Did you at the beginning of July attend a meeting with the lawyers and the White House

personnel whom you were going to be interviewing or your staff was going to be interviewing as part of your internal review?

A Yes.

Q And what was the purpose --

A Once again, I'm not precisely sure of the date.

Q What was the purpose of the meeting?

A The purpose of the meeting -- since most if not all of the White House potential witnesses had private counsel, as we had advised them to do, the purpose was to meet with those counsel to let them know in general what our investigation plan would be, to invite their cooperation and to discuss with them such issues as whether if they agreed to let their clients be interviewed by us, what protection, if any, would be afforded to interview notes and such things.

Q Did you discuss with these lawyers the issue of their appearances and testimony before the Inspectors General?

A I think we said we had agreed that we would

make White House witnesses available, and we urged all of them to make their clients available for those interviews. Whether we got to the point of directing them to do so or not, I don't know. But I was certainly prepared to direct them if necessary.

Q By the way, was your agreement to make White House witnesses available to the Treasury and RTC Inspectors General part of a package in or an agreement in which they agreed to furnish the transcripts of interviews back to you, transcripts of depositions back to you?

A Not in a quid pro quo sense or that we ever would have said if you don't give us the transcripts, we won't make the witnesses available. It was a suggested work plan in which we could do the most efficient and thorough job within this very narrow time frame that we both had available to us.

Remember, all these people -- I'm sure it is true of the Inspector General people as well as our own people -- were working day and night intensely for a 30-day period, much as you must have been to prepare for these hearings.

Q At the kickoff meeting with the lawyers for these personnel, where the issue of getting transcripts came up, did you tell them --

MR. SACHS: I haven't heard such testimony.

BY MR. CHERTOFF:

Q At this meeting, at this kickoff meeting with the lawyers and the White House personnel concerning these investigations, did you tell the lawyers that the White House would be receiving transcripts of their Inspector General's depositions?

A I believe we did.

Q Did you tell them you were going to be receiving it within approximately 24 hours after they were completed?

A I believe there is a reference to 24 hours in the talking points, but I do not recall whether I said that or anyone else said that at the time.

Q Was that your understanding what the arrangement was as of the time of this meeting?

A It was our understanding we were going to receive these transcripts seriatim. It is possible

there may have been a misunderstanding, but that is certainly what we understood.

Q I'm going to show you S 7392 through 94 and ask you if you recognize these as talking points prepared for you by Ms. Sherburne in anticipation of and for the use at the July 1 meeting. Page 7395 is part of that document as well.

(Witness examined the document.)

MR. SACHS: Before you answer that, I would ask to see the document.

THE WITNESS: Yes.

BY MR. CHERTOFF:

Q Do you recognize these documents?

A Yes.

Q Did you work from these talking points during the course of the meeting?

A I was certainly aware of them. That's my handwriting in the upper right-hand corner.

Q Where it says "WW hearings"?

A Yes.

Q So, as of the meeting on July 1st, it was your belief that you were going to have transcripts

59

of the Treasury witnesses' depositions on a rolling seriatim basis?
A That's correct.
Q That was pursuant to a request that you or members of your staff had made of people at Treasury?
A Yes.
MR. CHERTOFF: Let's take a short break.
(Recess.)
MR. CHERTOFF: Back on the record.
BY MR. CHERTOFF:
Q As of the time of your meeting on July 1st with the lawyers for the White House witnesses, did you have an understanding that the transcripts you were going to be provided from Treasury would have restrictions placed upon their use by you?
A I don't think we did other than the general conversation I had with the Secretary and with Mr. Knight about handling the whole subject of cooperation in a manner that would satisfy people as perfectly appropriate.
Q Did any of the lawyers present discuss their ability to have access to the depositions of

60

other witnesses that the White House would be receiving so that they could prepare their witnesses?
A Not that I recall.
Q I'm going to show you what has been marked as Exhibit 19737, a letter dated October 26, 1994 to J. William Codinha, special counsel of the Banking Committee, signed by Robert McNamara. If you take a look at it for a moment, then I have a couple questions to ask you about it.
(Witness examined the document.)
I'm going to put it before you again. I want to direct your attention to the second paragraph.
A You mean the third paragraph.
Q The third paragraph. You have anticipated probably what I'm going to ask about.
MR. SACHS: It doesn't take a genius, Michael.
BY MR. CHERTOFF:
Q The item is a question by Senator Shelby contained on page 71 of the transcript regarding the date on which former White House counsel Lloyd Cutler

61

asked for copies of the transcripts of interviews taken by the Treasury Inspector General.

The answer to this question is the following: "Mr. Cutler's request was first made on July 5, 1994 and renewed late in July."

You would agree with me, Mr. Cutler, that the statement in the quotes is incorrect?

A Well, there is certainly a discrepancy between that statement and our understanding as of July 1st as reflected in the notes for the July 1st meeting.

Q You would agree with me that before July 5th, you had asked for copies of the transcripts of interviews taken by the Treasury Inspector General?

A No. When you say "you," I take it you are meaning a collective you, I and my staff?

Q You and those acting at your direction.

A I would assume that must be so in light of the fact that those talking points were prepared for a meeting held on July 1st.

On July 5th there was a meeting among Ms. Sherburne, I think Ms. Cheston and several

62

Treasury officials. That may be a reference to that meeting.

Q I will ask you not to speculate about why someone else wrote something. I just want to make sure this is clear.

Your understanding and recollection is that you or those acting at your direction had earlier than July 5th made a request for copies of the transcripts of the Inspectors General depositions or interviews; correct?

A Yes.

Q Now, did you see this letter before it was sent out by the Department of the Treasury?

A I certainly have no such recollection.

Q Did anybody from the department call you, or to your knowledge any member of your staff, and request that you give them any facts relating to when you first requested --

A I don't recall receiving any call myself, and I have no knowledge of whether there was such a call from any member of the staff.

Q Now, let me direct your attention to July

63

5th. You indicated an awareness of a meeting that took place on that date including members of your staff. When was the meeting?

A What do you mean, when was the meeting?

Q When during the day.

A I have no idea.

Q Where was it?

A I don't know the answer to that. I assume it was at the Treasury.

Q Were you informed about it in advance?

A I have no present recollection, but I was undoubtedly informed since I met day to day with Ms. Sherburne and Ms. Cheston. I must have known about it either just before or just after.

Q What is your understanding of who attended the meeting and what transpired at the meeting?

A I have no recollection of who attended the meeting, but I think it is in many, many documents available here.

Q Would it refresh your memory if I told you the meeting included a representative of the RTC Inspector General and a representative of the

64

Treasury Inspector General?

A I accept your statement, but it does not refresh my memory.

Q Do you have any knowledge of what occurred at the meeting?

A Only that it was a meeting about the arrangements for making our witnesses available and receiving transcripts.

Q Did Ms. Sherburne report to you about what position the Treasury or the RTC was taking on the issue of providing transcripts?

A I have no present recollection. I'm sure she did report to me, but I have no present recollection of the details.

Q Would it refresh your memory if I suggested to you that the RTC Inspector General's counsel at the meeting was opposed to providing the transcripts to the White House?

MR. SACHS: By telling him that, does that cause him to remember that fact?

MR. CHERTOFF: Correct.

THE WITNESS: I think I earlier testified I

65

became aware at some point that there were objections from one or more of the Inspectors General to providing transcripts. And it may have been what I heard at the end of this meeting.

BY MR. CHERTOFF:

Q What was your reaction when you found out about those objections?

A Well, again, I have no immediate recollection. We are talking about something that is over a year old. But I would probably have tried to get on the phone with Secretary Bentsen or Mr. Knight.

Q Do you remember doing that?

A I remember calling Mr. Knight on a number of occasions in this time period on the issue of when were we going to receive the transcripts.

Q Did you discuss with Mr. Knight in any of these conversations the fact that you understood that at least the Inspector General of the RTC was raising objections?

A I think Mr. Knight told me that. I think I have previously testified to that this morning.

66

Q What was your response?

A My response -- I cannot recall it in detail, but I believe my response was we simply had to have the transcripts or be present at the interviews in order to do our own job.

Q Did Mr. Knight indicate that he would furnish -- have the transcripts furnished notwithstanding any objections from anybody else?

A Once again, I don't recall precisely what he said. I believe I urged that the transcripts should be furnished to us and that that was my understanding, that we would receive them.

Q And he agreed with that?

A Mr. Knight is a very cautious person. He may very well have said, I'm going to talk to the Secretary, or some such thing.

Q Did there come a point in your ongoing series of conversations with him that he agreed with you that you were going to get the transcripts notwithstanding any objections?

A Well, I don't want to -- once again, I have no specific recollection that he had agreed with me.

67

He certainly said he was going to use his best efforts to get me the transcripts, yes.
Q Do you remember calling Mr. Bentsen himself to urge the fact that you needed the transcripts in the early part of July?
A I remember trying to reach Mr. Bentsen on that subject during July on at least two occasions. I believe I communicated to him on at least two occasions that we needed to have the transcripts and I thought we had an understanding we would receive them.
Q What did he say to you?
A My recollection is that he said he would get to work on it.
Q I'm going to show you S 7845, which is a page from your calendar. It is dated July 6th, which would be the date after the meeting involving Ms. Sherburne that we talked about a couple moments ago.
Does this indicate that at 11:30 you had a meeting with Mr. Knight and Mr. McNamara?
A Well, it certainly indicates that it was on

68

the schedule, and I believe that meeting occurred.
Q Do you remember the meeting?
A I remember a discussion with Mr. Knight and Mr. McNamara on this subject, yes.
Q When you say "this subject," you mean the subject of the transcripts?
A Yes.
Q Was it at this meeting?
A I believe so.
Q Did you call the meeting?
A Well, I assume the meeting was the result of one of the phone calls I made to Mr. Knight.
Q And do you also assume that it was a result of your having learned the day before that there were objections to getting the transcripts?
A I believe so.
Q Now, having looked at this S 7845, record of a July 6 meeting, what do you recall was the discussion that you had with Mr. Knight and Mr. McNamara at that time about getting the transcripts?
A Once again, I have no immediate

recollection of the meeting or who said what at the meeting, but the general subject matter of the meeting was our need to get the transcripts and the fact that we thought we had an understanding to that effect.

Q Do you remember if at the close of the meeting on July 6th you had a commitment notwithstanding any objections to get those transcripts from Treasury?

A No, I don't.

Q Now, still during this time period of July, from the early part of July through the middle of July, did you have a conversation with Ms. Sherburne concerning a concern that the Inspectors General might complain about not getting cooperation from the White House?

A No. I have no recollection of any complaint from the Treasury side that they were not getting cooperation. If you have anything to show me about it, I will be glad to look at it.

Q I will read you --

A If it relates to the day-to-day scheduling

of particular depositions, there might have been discussions about that because the White House witnesses, as you know, in addition to performing their normal White House duties, were also being interviewed on other fronts.

Q I will read you from S 10443. I will read you the whole writing. It appears to be notes of Jane Sherburne, undated. "Meeting of IGs and Secretaries say can't meet deadline because not getting cooperation from WH," White House.

Does that ring a bell?

MR. SACHS: Could he see it, please.

(Witness examined the document.)

THE WITNESS: Yes, that does ring a bell.

BY MR. CHERTOFF:

Q What bell does it ring?

A It rings a bell relating to the scheduling of the witnesses, although in the July 1st meeting we had urged all the lawyers for the White House witnesses to make their clients available.

There were scheduling problems that apparently developed relating to the schedule of the

71

lawyers or the witnesses so that in the case of some witnesses, their depositions were delayed. I don't know if you have anything to refresh me, but certainly we would have at that point have strongly urged the counsel for all these witnesses to get their clients in for their depositions at the Treasury.

Q Now, to your knowledge, did Ms. Sherburne have conversations with anybody at the Treasury concerning the way in which Treasury witnesses were going to be made available for the Treasury or RTC depositions?

A Once again, I have no recollection. If you want to have anything that will refresh me, I would be glad to look at it.

Q I will show you S 10444, another set of notes from the White House, I believe from Jane Sherburne.

I want to direct your attention in particular to the middle of the page where it says "Bentsen deps," and then it says "confirmed accountable insist present private counsel protect

.72

exec priv."

See if that rings a bell.

(Witness examined the document.)

A Part of it I cannot read. What is the word next to "Bentsen"?

Q "Confirmed."

MR. SACHS: You are asking this witness to first read and then -- are you asking him to understand what Sherburne's notes mean?

MR. CHERTOFF: I'm asking him whether --

MR. SACHS: -- reading these words does anything to his recollection about the question you asked?

MR. CHERTOFF: Correct.

MR. SACHS: The question was?

BY MR. CHERTOFF:

Q Whether there were any discussions on the part of Ms. Sherburne or anyone else working with Mr. Cutler with people from Treasury about how the Treasury witnesses ought to handle themselves in their depositions by Treasury or RTC Inspectors General personnel.

73

MR. WITTEN: Before you answer it, can I look at this, please.

(Pause.)

THE WITNESS: Simply looking at the note, the note first lists precise schedules for the eight White House witnesses who up to that point I guess had not yet had their depositions. And then I get nothing out of the following paragraph, "Bentsen confirmed accountable." I don't know what that means as to his testifying.

The next word is "deps." I assume that means deputies. "Insist present private counsel protecting executive priv." I don't know whether that refers to Treasury witnesses either.

We were certainly interested in having private counsel present in depositions because executive privilege is something that belongs to the President and we wanted to be able to instruct the private counsel in response to particular questions to raise an issue of executive privilege if we thought there was one.

BY MR. CHERTOFF:

74

Q I want to ask you whether in the period in the middle of July a week or so after the meeting we discussed on July 6th with Mr. Knight and Mr. McNamara you had a continuing series of calls with Mr. Knight about getting the transcripts of the depositions from Treasury and the RTC over to the White House.

A Certainly from Treasury. As I indicated to you, we were much less interested in RTC transcripts.

Q When you asked for transcripts, you also wanted the transcripts of the White House witnesses who had been deposed by the Inspectors General?

A Yes.

Q During this period of time, did you make any arrangement with the lawyers for the White House witnesses to have them furnish their own copies of the deposition transcripts to the White House counsel's office?

A I don't recall whether we did or not. I did not.

Q Did you direct anybody else to?

A I don't recall, but I don't believe I did.
Q Did you know that such depositions were being received from the White House witnesses?
A I knew that each of the White House witnesses, all witnesses received a copy of their own deposition, and it would not surprise me if some of them made their depositions available.
Q But you weren't aware of it?
A But I was not myself aware of it.
Q Were you aware at least in some of the depositions we have seen that were taken by the IGs there was a specific request that the content of the depositions be kept confidential?
MR. SACHS: Just a minute. That is not entirely full and fair, Michael. We saw the other night four or five depositions which had various kinds of requests. The ones that I remember best, perhaps not surprisingly, is an exemption from any confidentiality with respect to other investigations.
MR. CHERTOFF: I think specifically what they said was that they weren't trying to prevent

people from answering questions from other investigations. I don't know that it was intended --
MR. KRAVITZ: I don't think that is accurate. My recollection of those transcripts is that they seek to make clear to the witness that they are to cooperate. They are encouraged to cooperate with other ongoing investigations and they don't limit it to simply answering questions. They simply encourage the witness to cooperate with other ongoing investigations.
MR. SACHS: I think the witness's answer that I expect him to give will make it irrelevant.
BY MR. CHERTOFF:
Q The answer is? Were you aware of any restrictions on confidentiality in the Inspectors General depositions?
A No, I was not.
Q I want to now direct your attention -- let me actually direct your attention to a number of documents, S 6957, 58, 59, 62 and 64, which appear to be phone lists from the Office of Special Counsel to the President dated July 15, July 18, July 19, July

77

21 and July 22.
Are these phone lists that would have been generated by your office?
(Witness examined the documents.)
A Yes.
Q And directing your attention in particular to the conversation on July 22nd, which I will represent to you was a Friday, did you have a conversation with Mr. Knight on that day at the request of Ms. Sherburne in order to force the issue of getting the transcripts?
A Once again, I cannot be precise as to the dates. But in that week, we were getting more and more concerned that we would not receive the transcripts in time for me to complete my report and deliver it when I was scheduled to testify before the House on the 26th, which was the following Tuesday.
I pursued that question with Mr. Knight, and I believe I was also trying to reach Secretary Bentsen at the same time.
Q Did you reach Secretary Bentsen?
A My recollection is that I did, but I have

78

no record of it. The call sheets that you see there are a record I have my secretary keep of all the calls I receive or make in the office. She is not there, obviously, over the weekend except when we are working, and on that Saturday, I was out of the city. I returned Sunday afternoon for the subsequent meeting.
But I believe I tried to find Secretary Bentsen and I did speak to him, and he also may have been out of the city.
Q What was the conversation you had with Secretary Bentsen?
A Well, I said I believe I had a conversation with him as well. In the conversation with Secretary Knight, and if I had such a conversation with Secretary Bentsen, the one with him, I pressed the same point I testified to before, that we simply had to be in a position to verify what I was going to say in my report against the transcripts of what the Treasury witnesses were saying in their depositions, because we had foregone an opportunity to question those Treasury witnesses in reliance on our

79

understanding that we were going to receive the transcripts.

Q In any of these conversations with Mr. Knight and Mr. Bentsen now up to the period of July 22nd, did any of them in these phone conversations lay down a condition that you would get the transcripts only if you agreed to restrict their use in a certain way?

A Well, as you know, we received a letter to that effect the following day.

Q Before the letter.

A Whether in the conversations there was any discussion as to conditions, I personally don't recall, but there may well have been, but it would have been quite general.

Q You don't recall, though, any specific discussion of a restriction on your use of the transcripts during your conversations with Mr. Knight about getting the transcripts or during your conversations, if any, about getting the transcripts with Mr. Bentsen?

A I don't remember a specific formulation of

80

a condition, no.

Q Did you discuss with Ms. Sherburne also during this week the possibility of having her review the transcripts of these Treasury depositions in order to communicate to the Inspectors General whether she saw inconsistencies between her own interviews and these depositions?

A Well, it may have happened. I don't immediately recall it. But I do recall that in the OGE report, there is a reference at the very end to two contacts which are contained in my report that did not come to light in the Inspector General transcripts.

Q Now, does that indicate to you that you had directed Ms. Sherburne to communicate with the Inspectors General about any discrepancies she saw between the depositions and her own interviews?

A Not necessarily. But it illustrates the point that we needed to see what one another were doing in order to be sure that both reports were as accurate as we could make them.

Q Your understanding is the Secretary agreed

81

with that view, that both investigations should involve disclosure back and forth so that both would understand what the other investigation had uncovered?

A That's what we had offered. Of course, since we never did get to see the Treasury transcripts until sometime on the 23rd, which was very close to the conclusion of the Inspector General investigation, I don't know whether we ever communicated to them other than in the substance of my report what we had found.

Q Putting aside the communication with them, though, your understanding was that the Secretary of the Treasury shared your view that both of these investigations should proceed collaboratively with each investigation getting the benefit of factfinding by the other?

A That is correct, and that is in effect what I had announced publicly in a press briefing at the end of June.

Q And that is your understanding from your conversations with Secretary Bentsen?

82

A That is my understanding. When you referred to my conversation with Secretary Bentsen, remember, I said I am not sure I had a conversation with him over that weekend. I said I had a conversation to that effect at a previous time.

Q At some point, though, you had had conversations with Secretary Bentsen in which you and he agreed about this philosophy that we just discussed about how these investigations should proceed?

A Yes.

Q Let me just show you what has been marked as 6877 for identification, I believe a letter you alluded to a moment ago to Jane Sherburne from Stephen McHale.

(Witness examined the document.)

Mr. Cutler, when did you first see this letter?

A I probably saw it -- well, I was away on the 23rd. I did not return to Washington until the afternoon of the 24th, when we had a meeting with counsel for the -- private counsel for the White

House witnesses. So, either I saw it the evening of the 24th or the morning of the 25th.

Q What was your response when you saw the restriction listed in the second paragraph?

MR. SACHS: Response to whom?

MR. CHERTOFF: To anybody.

BY MR. CHERTOFF:

Q Did you communicate any feeling to anybody after you saw that second paragraph?

A It did not trouble me for two reasons. The first was I thought we could live with that restriction in the event we were going to interview or prepare any of our witnesses after they would receive this thing, and second, I thought it was all academic because it was too late. It arrived too late. The transcripts arrived too late for us to use them in preparing or interviewing witnesses.

Q Did you understand this restriction to prevent you only from actually giving physical copies of the transcripts or reading verbatim from the transcripts, or did you understand it to restrict you in terms of disclosing as well the content of the

transcripts or the summaries of the transcripts?

A Well, I would read it reasonably broadly. It certainly covers delivering copies of transcripts or letting counsel for the individuals read the transcripts or reading verbatim large chunks of the transcripts.

But what is in your head is in your head, and I did not construe it as deleting from our heads the knowledge of what we may have learned from the transcripts.

Q You would agree with me, however, that the restriction would forbid, for example, passing on a summary of the transcript?

MR. SACHS: A summary generated by the White House after reading?

BY MR. CHERTOFF:

Q A summary generated by the White House or a summary obtained from Treasury.

A If we had not been authorized to release it, I think that is a fair statement.

MR. CHERTOFF: I think we are prepared to take a lunch break in one second. This is probably a

good time to take lunch.
THE WITNESS: When I said if we had not been authorized to release it, what I meant is if we had not been separately authorized to release it after receiving the McHale letter.
BY MR. CHERTOFF:
Q Before we break for lunch, do you recall receiving a separate authorization to release either the transcripts or summaries of the transcripts after the McHale letter?
A I do not recall it as of that time, but I have subsequently been informed we did receive such a release with respect to a particular summary.
Q Putting aside -- when you say subsequently informed, you mean informed by your attorneys in the last few months?
A Yes.
Q I don't think your attorneys want you to get into what they told you.
At the time were you aware, did anyone communicate to you -- I mean July or August 1994 -- were you aware, did anybody communicate to you that

there was a separate authorization to release either a transcript or a summary of the transcript?
A No, and I was not aware of any such release.
MR. CHERTOFF: Lunch.
(Whereupon, at 1:05 p.m., the deposition was recessed, to be reconvened at 2:05 p.m. this same day.)

87

AFTERNOON SESSION (2:05 p.m.)

Whereupon,

LLOYD CUTLER

resumed the stand and, having been previously duly sworn, was examined and testified further as follows:

MR. CHERTOFF: Back on the record.

EXAMINATION (Continued)

BY MR. CHERTOFF:

Q Mr. Cutler, before I proceed further, you had made mention earlier in the deposition about a press briefing that you gave to the press on June 30th in which you indicated in some way you talked about coordinating your investigation with Mr. Cutler --

A I don't think I mentioned that.

Q -- with Mr. Bentsen. I'm going to show you what has been marked as S 6871 through S 6878. It may be that what you are referring to is at page S 6873 in the middle, which I will direct you to, but I don't want to limit you. If there is anything else that you think is pertinent where you discuss this, bring it to my attention. I want to give it to you

88

and have you tell me what you were referring to when you talked about a discussion of collaborative investigations in your press conference.

MR. SACHS: Before he begins, point to the place on 73 that you just referred to.

MR. CHERTOFF: The middle of the page of the third page of the document.

MR. SACHS: Okay. There it is.

(Witness examined the document.)

THE WITNESS: Do you have the preceding page?

BY MR. CHERTOFF:

Q Everything is in there, I believe.

(Witness examined the document.)

Mr. Cutler, have you had an opportunity to review the entirety of that exhibit?

A Yes, I have.

Q Please read into the record that portion or portions which you believe or to which you referred earlier in the deposition regarding the discussion of the collaborative effort.

MR. SACHS: Let me put the pages in order

89

for you.

THE WITNESS: The principal reference is on page 3. The question is "Are you now coordinating this review? Is the Treasury Department? And can you describe how that coordination will occur?

"Mr. Cutler: I don't want to speak for Secretary Bentsen, but as I think has been reported, he originally said he was going to ask the Office of Government Ethics to conduct a review. The Office of Government Ethics issues opinions on statements of facts but has no investigating capability of its own. As a result, Secretary Bentsen asked the Office of Inspector General of the Treasury Department to conduct a review of the facts. That is now in process and I assume at some point the Office of Government Ethics will rule on the set of facts found by the Inspector General.

"And we will be doing something similar and we will be coordinating with the Treasury Inspector General with respect to interviews and exchanges of factual information on the Treasury side and the White House side."

90

And then, "Question: Will you be talking to people not now in the White House such as Bernie Nussbaum?

"Mr. Cutler: No doubt, yes."

Then there is a further reference on page 77. On pages 75 and 76, there is a further discussion relating to the investigation of the contacts and how we were going to go about our review of the contacts. There is a discussion as to how many contacts there were, and I replied we don't know yet but that we will know by the time the investigation is completed.

BY MR. CHERTOFF:

Q Now, is there any reference in this last passage you have made reference to to cooperating or collaborating with Treasury?

A No.

Q Is there anything else in the transcript of the press briefing apart from what you have read that relates to or discusses in your mind collaboration or cooperation with Treasury?

A No. I think what I did read clearly

91

indicates that that's how we intended to go about the investigation.
Q Now, did there come a time that you received from Treasury -- when I say "you," I mean you or your staff -- actual either hard copy or disks containing computer files of summaries from Treasury of the depositions?
A I know that -- summaries of Treasury depositions?
Q Yes.
A I did not know at the time of the existence of summaries. I learned in the course of preparing for this interview that we had received a set of summaries.
Q But you did not know that in July or August of 1994?
A No.
Q Now, you said you came back on Sunday, July 24th for a meeting in the evening with counsel. When did that -- what was the purpose of that meeting?
A The purpose of that meeting was to fulfill the commitment we had made in the earlier beginning

92

of July meeting with counsel that when we reached the final stages of preparing our report, we would let private counsel for the individual witnesses look at it and make comments to us if they thought we were incorrect in some of the factual statements relating to their clients or the conclusions we had reached.
Q And the manner in which you conducted -- how did you go about collecting these comments?
A Well, my recollection is we allowed them to read a draft on Sunday night, and among us we took comments from the individuals. I do not recall that we made any particular changes as a result.
Q When you say you allowed them to read a draft, a draft of what?
A A draft of my report and the chronology attached to my report.
Q And the chronology was a compilation of all of the information that had been collected through your internal review up until the time of that meeting on Sunday?
A Well, it wasn't everything we had learned. It was everything pertinent that we had learned that

93

we thought was material enough to go into the report.

Q Do you recall whether there were particular episodes that you were examining as to which there were differences of recollection or inconsistencies of testimony or inconsistencies of interviews?

A The report and the chronology refer to several differences of recollection among witnesses.

Q So, those differences of opinion or differences of recollection were set forth in the report and the chronology?

A Yes. It wasn't always A says this, B says that. Sometimes it was simply a statement that while recollections differ, this is apparently what happened or some people recall such-and-such and other people recall such-and-so.

Q Which lawyers attended this?

A Which lawyers?

Q Yes.

A I do not recall, but I believe we invited the lawyers for all the White House witnesses and that all of them attended. I am not certain of

94

that.

Q Did you invite the lawyers for the Treasury witnesses?

A I do not recall doing that.

Q And in the meeting, were all the lawyers given the same document, same chronology and draft report?

A Once again, I do not precisely recall, but they must all have been given the same document.

Q Where did the meeting take place?

A I think it was in the room adjoining the Indian treaty room in the EOB. I know that's where the first meeting was held. I think the second meeting was in the same area.

Q Was there discussion during the meeting of the report? During the meeting was there a discussion of the report?

A Not that I recall in particular. We were soliciting their comments, and among us we received some comments.

Q In what manner did you solicit the comments and receive them?

95

A Simply to say if they saw anything in the report that they thought incorrectly described either the facts relating to their clients or our judgment about those facts, they should let us know.
Q And did they then sit there and read the reports?
A That is my recollection.
Q Did you observe lawyers for different clients talking among themselves?
A Well, I'm not sure I stayed during the period when they were reading the reports.
Q How long was the process of them reviewing the reports?
A I don't recall that, either.
Q Can you give us a general sense? Was it more than an hour?
A I would assume it went on more than an hour, yes.
Q Were there any restrictions placed in terms of taking notes?
A I don't believe so. We asked them to preserve the confidentiality of what was in the

96

report, yes.
Q And who took comments?
A I believe Ms. Sherburne was there. I believe Ms. Cheston was there.
Q Do you know the manner in which they actually received the comments?
A No, I don't.
Q Were the comments in writing?
A I doubt it. There may have been subsequent comments in the course of the next day, but we finalized the report on the following day and night.
Q Before you held this meeting, did you consider, either yourself or in combination with your associates on the matter, whether it was advisable to share this draft report with the lawyers for these witnesses in advance of their appearances before the House and the Senate?
A Well, we knew that before the witnesses appeared before the House and the Senate they were going to see all of the transcripts in any event.
Q All of the RTC and Treasury transcripts?
A All of the Treasury transcripts was my

97

understanding.
Q How did you get that understanding?
A Number one, it happened. Number two, the letter from Mr. McHale, it spoke about when the conditions will be released, and the Treasury itself reported they released the conditions either on the Tuesday or Wednesday.
Q Tuesday or Wednesday of what?
A Of the following week, which would have been the 26th or 27th.
Q But the 24th was in advance of that?
A Yes.
Q As of the 24th or days preceding the 24th when you were planning the meeting, did you have a knowledge of when the transcripts were going to be released?
A We did not have precise knowledge, but we knew it would happen very shortly. We were not communicating the substance of any transcript. We were communicating my report.
I was allowed by the McHale letter to use the transcripts for purposes of doing my report, and

98

what we showed to these lawyers was to give them a fair opportunity to be heard on anything in the report that they believed was incorrect relating to their clients.
I just don't see how that is any more subject to criticism than your preparing a report and showing it to your Senators or an independent counsel preparing a report which is then made available to all of the subjects of the investigation for comment before it is released to the public.
Q With due respect, the report we prepare for the Senate, the senators themselves are not the people being investigated as witnesses. The question here isn't whether it was appropriate to show the report to the President before it was released or show some uninvolved person. The question is showing the report to the individuals who were going to be witnesses testifying.
A You had already interrogated all of these people.
Q I don't want to argue with you in the deposition, Mr. Cutler. What I want to ascertain is,

99

did you consider whether you thought it was advisable to show the lawyer for each witness what everybody had said to the extent it was set forth in the report?

A All we showed them was my report.

Q Which contained within it the distillation of evidence collected from all the witnesses with pertinent information?

A All of them had testified many times; they all had lawyers. The lawyers had undoubtedly talked to one another. There was nothing they could do to change their testimony without risking a perjury charge. I see absolutely nothing wrong with it, and I see everything right about the White House counsel in the course of preparing a report as to the conduct of White House employees to give those White House employees through their counsel an opportunity to comment.

Q Was the issue allowing witnesses to comment upon your description of their own testimony, or was the issue allowing them to comment on the overall report? Which was the -- what were you trying --

100

which were you trying to achieve?

A I was trying to give each of them a fair opportunity to comment on material relating to each client, their own particular client. I see that they not only had to see what we said in the report about what their client had said but what was said in the report as to what other witnesses had said that might be in conflict with what their client had said.

Q Did you give thought to the fact that this was occurring before any of these witnesses had testified either in the House hearings or in the Senate hearings?

A Mr. Chertoff, I was the first witness. I was to present my report. I could not present a report as to which I had satisfied myself that I had all the facts correctly stated and had given the persons involved an opportunity to comment on my facts unless I showed them a draft of the report under a pledge of confidentiality before the hearings began.

Q Was the purpose of preparing the report to report to the President so that he could take any

action deemed appropriate with respect to members of his staff, or was the purpose of the report to prepare you to testify before Congress?

A The purpose of the report was to both. I was to make a report to the President and recommend actions to him, and that was immediately to become public, and because of the schedule and the House committee having invited me to be the first witness, it had to be before the 26th of July or by the 26th of July.

Q When did you actually furnish your report to the President?

A I showed a draft of the report to the President, I believe it must have been on the 25th, because we didn't finish until the 25th. It might have been a day or two earlier, but I believe it was on the 25th.

Q So the President only got the report of this internal review, is it fair to say, less than 24 hours before you presented it to Congress?

A Yes. Our report was being edited, modified, expanded, contracted virtually on a 24-hour

basis a day, certainly from the 22nd right through the time I presented it.

Q Did you consider in terms of your preparation of the report whether the President should be given the opportunity to act on the report and take any steps that were required in advance of your testifying before Congress?

A I did not think that was practicable. So I wrote the report as containing recommendations as to what ought to be done, most of which I had the power to take on my own authority.

Q So that the amount of time between the completion of the report and submission to the President and the public testimony about the report before Congress was really not sufficient to allow the President to take any disciplinary action or any other action in response to the report?

A Not in my judgment. In fact, the report I showed to the President was not the final report. It could not be, because we were continually editing it. But it was the essence of the final report.

Q Is it fair to say, therefore, that the

principal consequence of the report was to allow you to make your testimony before Congress?

A I don't understand the nature of the purpose of that question, Mr. Chertoff.

Q The purpose of the question is to determine whether the review was designed to allow a decisionmaker to take action based on an investigation or whether it was designed to prepare someone to mount an explanation on behalf of the White House and Congress. Those are not wholly separate, but there is a difference in emphasis.

A Mr. Chertoff, we are in the context of an enormous political battle between the parties over what could be made of the alleged Presidential participation in Whitewater and the conduct of the President's aides once the Whitewater story was reaching the general public. We were at a stage where any report would become public. We were at a stage where Congress wanted to start its own inquiry and start hearing its own witnesses. The House at least asked me to be the first witness.

So, I had to have my report complete and

clear by the time I testified, which I believe was the 26th. That was a continuous, as I said, 24-hour-a-day job for several days preceding that. There was no way in which that could be done and still allow the President time to ponder, deliberate, consult with other aides and take remedial measures on his own.

He had to be content with a report from me making various recommendations. The moment I made my report, it was going to become public. Just imagine if I had said I made a report to the President and I cannot disclose the contents for 24 or 48 or 96 hours. The timing was such that I had to complete the report and be prepared to present it to the Congress on the following day.

Q Well, did the President --

A We could not even comply with the 24-hour rule, and we didn't.

Q Did the President in fact take any action as a consequence of the report?

A The President authorized me to go ahead and carry out the recommendations that are in the report

105

insofar as they lie within the power of the Presidency, and I did that.

Q Which were what?

A Which were essentially to cut down very severely on who within each department could convey information about pending civil or criminal proceedings of interest to the Presidency and who could receive it in the White House. That was the principal recommendation.

There were other recommendations about who could assert executive privilege and under what circumstances. There were recommendations relating to recusal. They are all right before you in my report.

Q Now, on Wednesday, July 27th, which was the day, I believe, after your testimony before the House, did you have a further meeting with the Whitewater witnesses?

A Unless you have something to show me, I have no recollection of that.

Q Wednesday July 27th at 6:00. I'm showing you S 9327, which is a copy of your datebook.

106

(Witness examined the document.)

A There must have been such a meeting.

Q What was it about?

A I don't actually recall at this moment.

Q This was after you had made public your report on Tuesday, the 26th; correct?

A If I am right about Tuesday, the 26th, yes.

Q Was there any more work that needed to be done on the report after your testimony in the House?

A Well, it was a report including findings of fact, and we had to be sure, of course, that if we learned anything inconsistent with what was in the report, that we would amend the report accordingly.

Q Was the meeting with Whitewater witnesses designed to determine whether there were new inconsistencies?

A No, I do not recall specifically, unless you have something to refresh me, what went on in that meeting, but I assume it was a meeting relating to the fact that each of them was about to be a witness. I believe some had actually testified on

107

the 27th, unless the 27th was not a hearing day.
MR. SACHS: Do you recall such a meeting even took place?
THE WITNESS: I need something to refresh me about it. But it would be perfectly normal --
BY MR. CHERTOFF:
Q This doesn't help?
A That's a schedule. It would be perfectly normal to have a meeting at least with the lawyers for the witnesses before they took the stand.
Q Why?
A Because I am the White House counsel. These are White House staff members who are under attack, and it is part of my responsibility to see to it first that they comply with privilege rules; second, that they tell the truth as best they can; and, third, if I saw something in their statements which I thought was inappropriate for them to say or could be said better, it was something about which I felt I could advise them in the interest of the Presidency.
Q Did you view the White House witnesses as

108

being under attack?
A Absolutely.
Q When did you -- starting from when did you view them as being under attack?
A They were under attack in the press. They were under attack by Senator D'Amato. They were under attack by Senator Bond. They were under very serious political attack. The allegation was that permitting these contacts to happen was wholly improper and there were beginning to be allegations that some of them had lied.
Q When did you form the view that these witnesses were under attack?
A Mr. Chertoff, that cannot be a serious question. Do you want me to get NEXIS and give you everything that Senator D'Amato and Senator Bond said?
Q I want you to determine whether in your state of mind when you went into this internal review you had the state of mind that the White House witnesses were under attack.
A I certainly had that state of mind, that

they were under attack by Republican members of the two committees.

Q When you set about doing this internal review, did you view your role as responding to this attack?

A My role in doing the review as a new person coming on board who knew something about ethics and has a certain reputation for integrity was to find the facts as best I could and to make recommendations as to any remedial measures that ought to be taken.

Q Did you simultaneously have in your mind the role of defending the White House against an attack?

A I was certainly not going to defend a lie if I found a lie, or improper conduct if I found improper conduct. Whether you believe it or not, it is possible for an ethical lawyer to do both of those things.

Q To do both of which things?

A To do a thorough, fair and accurate factfinding report and to make appropriate recommendations and also to defend members of the

White House staff who in my judgment had done nothing improper against unfair political attacks.

Q And your conclusion that these attacks were unfair was formed after you completed your report on July 25th or July 26th?

A It was formed certainly by the time I had completed my report. I had been working on the report for a month.

Q Now, were you aware also on July 27th that a copy of one of the -- that a copy of a Treasury Department summary of an RTC witness's deposition had been furnished by someone in your office to a lawyer for one of the White House witnesses?

A I was not aware at that time, no.

Q Did you ever -- putting aside whether you were aware of the specific event, did you ever authorize anybody to do that?

A The issue never arose, as far as I was concerned. I was not even aware that we had received summaries.

Q Did Ms. Sherburne during that week, the week of the 25th, raise with you the issue about the

111

fact that one of her subordinates had showed a copy of a summary of an RTC deposition to a lawyer for one of the White House witnesses?

A No.

Q Did Ms. Sherburne indicate to you that she had been informed that these summaries were being given to the White House but only if in the event they were made public, they were not made public with attribution?

A No.

Q Did you --

MR. SACHS: Excuse me, Michael. Let me see that document, the one to which you were apparently referring in your last question.

MR. CHERTOFF: I'm very happy to show documents that I use to refresh recollection or ask off of. The fact that I'm looking at a document and asking a question which is triggered by the document does not in my mind --

MR. SACHS: Either you are going to show me the piece of paper or I am going to get my copy of what I think the piece of paper is. The reason I am

112

going to do that is I don't think your question accurately reflects what the document says.

MR. CHERTOFF: I will reformulate the question.

MR. SACHS: Let me be specific. The "not for attribution" line, it is my recollection -- and I stand corrected if I am wrong, but I don't think I am -- the "not for attribution line" does not refer to summaries. It refers to transcripts themselves, I believe.

BY MR. CHERTOFF:

Q I will read this entire couple paragraphs to you, Mr. Cutler, and see if this rings a bell.

MR. SACHS: Why don't you represent what you think it is.

MR. CHERTOFF: It is S 7913. It is an E-mail or memo produced by the White House addressed to Jane. "David Doherty at Treasury told me the RTC has not yet agreed to release its transcripts but may do so tomorrow. He said they seemed very touchy about the transcripts and expressed to him some dismay that Treasury had given them to the White

113

House.

"RTC's concern is that it does not want nonpublic information released that could impair its investigations. He stressed that it is important that nothing in the transcripts be made public, at least with attribution, until they are released. I told him we understood that.

"This afternoon he gave me summaries of the transcripts that he had not realized we did not have and told me that the transcripts could be given to witnesses and their counsel. I faxed the Catsano summary, three pages, to Bill Taylor and corrected one statement that inaccurately reflected the testimony. I told Taylor's associate of Treasury's concern about not attributing information to the transcripts."

Now, did this series of discussions or discussion between Treasury and your office come to your attention during at that time week?

A No.

Q Do you see any purpose -- let me withdraw the question.

114

Did you authorize or approve any arrangement in which information that was contained in transcripts, albeit in summary form, was transmitted to a witness or a lawyer for one of the White House witnesses with the understanding that it was not to be attributed to the transcripts?

A I was not aware of any such understanding at the time.

Q Were you aware that the RTC -- let me withdraw the question.

There was -- when documents were provided to the Inspectors General for Treasury and the RTC from the White House, there were redactions made; correct?

A You are speaking of documents?

Q Yes, documents. When the White House provided documents to Treasury and the RTC for its investigation, for their investigation, some of those documents were redacted; correct?

A I don't know for a fact whether redactions were made. But the one or two which I saw which were Treasury documents, rather than RTC documents. It

115

looked as if redactions of nonrelevant material had been made.

MR. WITTEN: He is asking about the White House production of White House documents to the Treasury.

THE WITNESS: There were redactions of nonrelevant material.

BY MR. CHERTOFF:

Q Did you authorize those redactions?

A I knew they were being made. I did not go over them one by one.

Q Were you asked either orally or in writing -- when I say "you" I mean you or your staff -- by the Inspectors General of RTC and Treasury to certify the fact that the material being redacted was irrelevant?

A I do not know.

Q Let me show you what has been marked -- this doesn't have a Bates number -- it is S 10311 and S 10312. I ask you if this is a draft of a letter prepared for your signature that would have certified that the redactions being made were not relevant.

116

(Witness examined the document.)

A Well, I recall the fact that redactions had been made for relevancy. I do not recall signing this letter, but I may very well have.

Q Actually, the question I was going to ask you is, do you know why that letter wasn't sent?

MR. SACHS: Does he know whether it was or was not sent?

BY MR. CHERTOFF:

Q Do you know whether this certification was ever sent?

A I don't know whether a certification was made or not, but the issue arose a number of times, I recall, with respect to the documents we furnished to the committee, which I believe are the same documents. The same questions about relevancy were made, and we gave numerous assurances in the hearings that the only redactions were for relevancy.

Q In connection with this draft letter, do you recall any discussion about whether you ought to send the certification to the Inspectors General about the irrelevancy of any redactions?

117

A I do not recall, but I knew the standing principle was we would redact only for irrelevancy and that we were not redacting for purposes of privilege.

Q You don't have any recollection of a discussion about whether you ought to send a certification to that effect?

A I have no recollection of either seeing that letter or any comparable letter by someone else. But if you have something to refresh me with, that was certainly the policy, what was set forth in that letter.

Q Let me show you S 2121 and 22, a letter of August 23, 1994 to Chairman Riegle of the Banking Committee. I ask you if you recognize that letter.

(Witness examined the document.)

A Yes, I recognize this letter.

Q Did you see any earlier drafts of that letter?

A Yes, I believe there was an earlier draft of the letter which when I saw it had comments on it from Ms. or Mrs. Black of the Treasury or the RTC,

118

and we adopted the changes that she suggested.

Q I'm going to show you S 2115 and ask you whether this is the earlier draft you saw or a portion of it.

(Witness examined the document.)

A Yes.

Q Remember the discussion you had with Ms. Sherburne concerning the comments by Ms. Black?

A I remember seeing Ms. Black's comments and agreeing that we could make the changes that we actually made.

Q Did Ms. Sherburne tell you that Ms. Black was angry because she felt the first draft of the letter made it seem as if the RTC Inspector General and the Treasury Inspector Generals had agreed at the very outset in July to furnish transcripts to the White House?

A Well, I knew she was unhappy about the phrasing and therefore suggested this revision, yes.

Q Did you know exactly what the nature of her unhappiness was?

A Well, I believe her claim was that at least

119

the RTC Inspector General did not know that we were being furnished the transcripts.
Q Did you agree with that claim?
A I would have no way of knowing. That is internal to the Treasury.
Q Did you talk to Secretary Bentsen about this issue that day?
A That particular issue, no.
Q I'm going to show you S 7930, which is your phone list. Item 21, August 3, 1994, "Talk to Secretary Bentsen." Do you agree with me that indicates you talked to Secretary Bentsen on that day?
A If that's what it says, yes.
Q What was the conversation about?
A I imagine the conversation had to do with the fact that I was responding to Senator Riegle's letter and I believe he was sending in a somewhat similar response of his own either at that moment or somewhat later. But I do not recall that the discussion reached the issue of Ms. Black's objections or whether the RTC Inspector General had

120

known about the fact that we were receiving the transcripts.
Q Did you discuss with Mr. Bentsen whether the Inspectors General had had any role to play at all in the decision about giving you the transcripts?
A Well, I was certainly aware at some point, I think from Mr. Knight, that there had been an objection to receiving it from one or more of the Inspectors General, because they said it was contrary to their policy in the investigation. That was all water over the dam by this time.
Q You knew that from Mr. Knight before you got the transcripts?
A Yes.
Q When you got the transcripts of the deposition testimony, did you use those transcripts to go back to White House officials and go back over their testimony and confront them with conflicting testimony?
A No. It was too late to do so at that time.
Q I'm going to read you a portion of an AP

121

story that appeared on May 5, 1995 by John Solomon. I will give you the whole thing to read afterwards. I will read you the pertinent portions.

A I have read it.

Q Let me read you the pertinent quotes. "Former White House counsel Lloyd Cutler acknowledged this week that the depositions were used to identify discrepancies in the recollections of Presidential aides before the Congressional hearings. White House lawyers would then 'confront' the aides with information they had obtained from the depositions without revealing the sources, he told the Associated Press. 'If we found inconsistencies, we would go back to White House officials and go back over testimony they gave us,' Cutler explained, 'and then we would say "we have heard other reports." I think it was perfectly appropriate to say that "this is your testimony to us, there is conflicting testimony, are you sure that's what you said" Cutler said."

Did you make those statements?

A I made a number of the quoted statements.

122

I cannot say that these quotes are accurate entirely. But I think most of the quotes are accurate. But those quotes are based on my mistaken assumption -- and this memory now is nine or 10 months after the events in question in July of 1994; this is May of 1995 -- my mistaken assumption and my failure to verify before I talked to Mr. Solomon the fact that we did not receive these Treasury transcripts until July 23rd, when it was too late to do anything with them.

In that quote, I am going on the assumption that we did receive them and that if we had used them in the way I described, that was a perfectly appropriate and ethical thing to do and it would not have violated the condition. But the fact is, we did not use them because we received them too late.

Q Are you positive that no transcripts or summaries of transcripts were received before the 23rd?

A Not from Mr. McHale and the Treasury. We did receive one or two transcripts from the lawyers for some of the witnesses. And the Treasury was

123

aware of that.
Q The Treasury was aware of that?
A My understanding is Mr. McHale was aware of that.
Q Where do you get that understanding from?
A From Ms. Sherburne.
Q Ms. Sherburne indicated to you that Mr. McHale was aware of the fact that some of the individual witnesses had furnished copies of their transcripts to the White House?
A Yes.
Q Are you positive that the Treasury -- putting that to one side, the issue of what witnesses' lawyers furnished, are you positive the Treasury did not furnish either transcripts or summaries of transcripts to the White House before September 23rd?
MR. SACHS: You said September.
BY MR. CHERTOFF:
Q July 23rd.
A If they had, either a lot of secrets were being kept from me or there was no point to all the

124

telephone discussions I was having with Mr. Knight and the Secretary.
Q Is it your testimony that after the 23rd -- do you know when on the 23rd the transcripts were received?
A As I told you, I was away that day, but the letter is dated the 23rd.
Q Your position is after the transcripts were received from Treasury on the 23rd, it was no longer practicable to confront witnesses with testimony?
A That is correct, and we did not do so.
Q Now, you will agree with me, will you not, that we have previously established that the earliest request for transcripts from the Treasury made by you or people at your direction was sometime on or before the meeting on July 1st with the lawyers where you indicated transcripts were expected within 24 hours; correct?
A It would seem from that piece of paper that we must have obtained the impression from the Treasury before July 1st that we would receive the transcripts and that we would receive them seriatim.

125

Q In fact, the statement in your talking points that was made to the lawyers was that the transcripts were coming and should be available in about 24 hours after they were produced; correct?
A Right.
Q So that the letter Mr. McHale wrote, the statement in the letter of Mr. McHale of October 26th that says in response to Senator Shelby's question about the date on which you asked for copies of transcripts of interviews, the answer that reads "Mr. Cutler's request was first made on July 5, 1994 and renewed late in July," that's incorrect?
A Well, I don't know whether that was coordinated with Ms. Sherburne or not before it was sent. And the meeting was one -- there was a meeting on July 5th which I did not attend relating to the details or the mechanics, whether transcripts would be furnished and how. So, it is -- to me, the discrepancy between July 1st and July 5th is a minor matter. It doesn't seem it affects anything.
Q Just to clarify, in fact, you have a recollection that the issue of getting transcripts

126

may have arisen as early as your lunch with Secretary Bentsen on June 21st; correct?
A Yes.
Q Putting aside the significance you attribute to the discrepancy, you would agree with me it is not correct to say that your request was first made on July 5, 1994?
A I would agree with you that from my recollection and from the written evidence, it appears that we made that request before July 1st.
Q Now, your testimony is that, to your knowledge, the letter of October 26th from Mr. McNamara to Mr. Codinha was not run by the White House?
A I don't know. I said it may well have been. I don't know.
Q Now, on October 28th, you prepared a letter answering certain questions of Senator Bond. It is in the record, but you can have a copy too.
A I think I am familiar with the letter.
Q S 2129 to 2132. I want to direct your attention to the letter. Did you prepare this letter

127

yourself?
A I reviewed this letter before it was signed and I may have edited it before it was signed.
Q It is your signature on the last page?
A Yes.
Q Now, let me direct your attention to the question 1 and answer 1. Question 1, and read along, "When did the White House tell Treasury personnel that you wanted copies of the Treasury RTC depositions? To whom was this request communicated? Was the request made for all deposition transcripts or was it simply for the transcripts of White House personnel?
"Answer 1: On July 5, 1994, lawyers from the Office of White House Counsel told Treasury personnel that the White House would like to receive transcripts of then-upcoming Treasury RTC depositions. This request was later restated on other occasions during July 1994. The request was communicated to Francine Kerner, Stephen McHale, Ken Schmalzbach and Secretary Bentsen. The request was for all deposition transcripts."

128

Mr. Cutler, is it not correct that in fact, as we just established, there was at least earlier communication before July 5th between you personally and someone from Treasury concerning getting the transcripts?
A Well, there were discussions between -- discussions that I initiated with Secretary Bentsen and I believe with Mr. Knight that are reflected in the talking points for that July 1st meeting. It may well be that what you might call a formal request or a request as to the mechanics of how it would be done was initiated at the July 5th meeting. Once again, I don't see the significance.
Q Is there a reason in the context of answer number 1 you did not disclose the fact that there had been earlier conversations with the Treasury about this?
MR. WITTEN: Objection on the grounds of obnoxious insinuation, Mr. Chertoff. "Did not disclose," come on.
MR. CHERTOFF: I'm asking whether there was a decision not to disclose it. I think I am being as

129

low-key as you can be.
BY MR. CHERTOFF:
Q Was there a reason it was not disclosed?
A There was no decision not to disclose. Either we misremembered or we agreed that we would use the date of the discussion of the mechanics on July 5th, as I gather had already been done by Mr. McNamara. There was certainly no conscious decision not to disclose. For the life of me, I cannot think even in my best conspiratorial manner what the motive for that would be.
Q Was there a reason that Mr. Knight's name wasn't included in answer number 1?
A I can't imagine what that would have been, either. Mr. Knight was Secretary Bentsen's designated representative for handling the cooperation arrangements. Why would anyone in his right mind want to misstate the facts by four days?
Q I don't think the issue is four days. If you are asking me on the record for why I am pursuing it, I will tell you that a description of your prior discussions about the issue of the transcripts which

130

appear at least to suggest that they occurred in perhaps mid to late June, your understanding on July 1st that these transcripts would be forthcoming I think raises issues or raised issues in people's minds at the time last year about exactly when the arrangement was made and whether in fact it was disclosed in other responses received from Treasury that it was really the Inspector General of Treasury who made his mind up or whether it was a done deal and the Inspector General Treasury was kind of swept along when the issue was presented to him on the 23rd of July.
I think that's what the pertinence of it is. In any case, I am obliged to get your answer. I take it your answer was an oversight or an error of some kind?
A It was either an oversight, if you wish to call it that, or it reflects a sense that the right date to use was July 5th because that's when the discussion of the mechanics began.
MR. CHERTOFF: Okay. I have no further questions.

131

MR. KRAVITZ: Let's take a two-minute break.

(Recess.)

MR. BEN-VENISTE: We have no questions.

MR. CHERTOFF: I have literally two questions.

BY MR. CHERTOFF:

Q You have discussed in your earlier testimony meeting with Mr. Knight and Mr. McNamara. Did you have any discussions directly with Mr. Schmalzbach of Treasury concerning the transcripts?

A I don't remember. He might have been at that meeting. I think I met him really before any of this began. I was invited once by Jean Hanson to come visit the Treasury General Counsel's Office, which is the most handsome office any general counsel in the government has. It has a wonderfully ornate ceiling and Victorian furniture. She introduced me to a number of members of the staff, including Mr. McNamara. I remember that, and possibly Schmalzbach, if that's his name.

132

I do not remember a particular meeting with Schmalzbach, but it is entirely possibly he was along in one of these meetings.

Q Did you have any conversation with Mr. McHale of the General Counsel's Office concerning the issue of the transcripts?

A I don't believe so. I believe those were mainly Jane's conversations.

MR. CHERTOFF: That's it.

MR. SACHS: In the interest of fairness, if between now and Thursday it develops that you have any documents that you seek to show either of our clients, Mr. Cutler or Ms. Sherburne, we would appreciate you letting us know so that they can acquaint themselves with the documents and be prepared to respond when and if asked about them.

I recognize that it is always possible that a senator can decide to ask a question that you have no control over. To the extent you are shaping the events of Thursday, I'm making that request and hoping you can honor it.

MR. CHERTOFF: We have obviously shown some

133

documents during the course of both of these depositions. I suspect we probably will have wound up showing you many of the documents we would show. I can't warrant that we are not going to have additional documents as we go through this, partly because we received, for example, production even yesterday of things.

I think what I can say is I don't have the ability and I don't think any other witness has ever asked us to do this to furnish in advance all the documents we will use.

What we do try to do when we are able to get ourselves sufficiently prepared is if we are going to use documents with respect to a witness, to furnish them in a group at the table for the witness to come up and look at at the time of the hearing. But we don't usually forward them in advance. In fact, I think there is maybe an injunction against our doing it because these things are held confidentially.

What we will try to do is if we have documents we are going to use, we will provide you

134

with a set of them up at the hearing.

MR. SACHS: I will proceed on the assumption that the committee wants to develop a full and accurate record, and my request stems from that assumption.

You will get a full and accurate record from my clients, I hope in any case, but it would help that process if they knew more than two instants before they are asked a question about a document.

MR. CHERTOFF: We will see if there is anything that hasn't come up. Let me also say this, in asking the question, you raise a separate issue.

MR. SACHS: I didn't want to raise a separate issue. I just wanted an answer to my question.

MR. CHERTOFF: One thing I think that is difficult for us with this request is that you represent two clients who have material testimony to give on the subject of this portion of the hearings. We obviously didn't make an issue about that in terms of suggesting there is some reason to disqualify.

At the same time, it is partly ironic that

135

the very gist of these hearings to some degree reflects a discomfort on the part of some senators of witnesses getting together to kind of put their testimony together and work together.

So, when you ask me to provide documents we would be asking one witness about, I guess I would be doing it with the understanding that both witnesses are going to be shown that. That's going to be probably an additional issue.

MR. BEN-VENISTE: Let me make a statement about my thoughts about this. This is not a criminal investigation, Michael, although much of your professional career has been devoted to criminal investigations.

This is in the nature of an attempt to refresh recollections and get the best possible recollections for each witness on the record. The idea of having a hearing about this whole subject matter is something that you and I have had private conversations about.

But since it appears to be the fact that we will have hearings on the subject, the notion of

136

suggesting that a witness shouldn't have the opportunity to review documents that are pertinent to that witness's testimony at some point in advance of his testimony strikes me as being completely unreasonable to the nature of our hearings.

In any sort of civil litigation, a witness would have those documents months in advance of any public testimony related to the subject matter under which his deposition was taken.

It seems to me to be a not unreasonable request, since it is reasonable to expect on the basis of your thorough preparation that you will know what documents you will wish to show the witness at least a day in advance of the hearings. It has been my experience in working with you that you are extremely well-prepared and organized.

MR. CHERTOFF: That's just an illusion, Richard.

MR. BEN-VENISTE: Whatever the illusion or reality of that may be, this is not an unreasonable question. It calls into issue a lot of what has been sort of the tone of these preliminary proceedings in

advance of public hearings. I won't say any more about it.

MR. CHERTOFF: I think that there are two issues raised here. First of all, Richard, I'm not going to apologize for the fact that my background is in doing criminal investigations.

MR. SACHS: We would all have to plead guilty I think at this table.

MR. BEN-VENISTE: I'm not seeking an apology. I am seeking for you to recognize a distinction.

MR. CHERTOFF: I will tell you the subject of discovery has come up from time to time in these proceedings. Some people wanted to see the depositions of other witnesses.

Whether or not Richard agrees with the need to have hearings on this subject, I can tell you that my clients, who are 10-odd senators, do feel strongly, some of them quite strongly about this issue and quite strongly about whether the sharing of information about testimony last year in which truthfulness to Congress was one of the principal

issues was itself somewhat of an impedance to getting the Senate's work done. I don't want to debate that. People have different views about it.

Again, acting like a lawyer responsive to my clients, I have a concern about not engaging in or doing the very thing which there have been complaints about with respect to last summer.

Second and wholly apart from that, obviously the documents you, Mr. Cutler, has furnished us are in his possession. We do have documents in our possession including documents which the White House has designated as highly confidential that we are strictly limited in our ability to use until the actual public hearings begin.

I think, therefore, that even if I were inclined to make documents available, it would run afoul of the rules that we have all agreed upon in terms of keeping these things so confidential that I will tell you that the Senators themselves can't get these until the day before the hearings.

MR. BEN-VENISTE: That's somewhat disingenuous, because the request is for documents

which will be used at the hearing. I am sure some methodology could be worked out so that the documents could be inspected and not taken. Since the notion is that they will in fact be used, then the question of their confidentiality is of only brief duration.

So, I think the real issue is not talking about the notion is beyond the Versailles hall of mirrors defense, the notion of witnesses now agreeing with each other and sharing information with some notion of conspiratorial agreement to thwart the truthfinding process.

Rather, it is, it seems to me, a logical question for a witness's answer to be complete and accurate that the witness be shown a document somewhat in the advance of the moment that you might inadvertently wish to spring it on him.

MR. CHERTOFF: I know the witness doesn't want to hear an extended debate. I will take your request. I think in the main, the documents we will use are the documents you have been shown.

I don't think there is anything that is terribly surprising. But I can't warrant you that

there won't be a document more or a document less. But I think you, basically from your own preparation from what has occurred here, know what the general gist of it is going to be.

MR. BEN-VENISTE: My suggestion would be for you to make contact with the Majority staff sometime in the late afternoon before the testimony, see whether anything might have come up that might have fallen between the cracks in terms of their willingness to provide you with a reasonable disclosure.

MR. SACHS: Okay. We thank you for your consideration and we thank you for this entertainment. We bid you good afternoon.

(Whereupon, at 3:15 p.m., the deposition was concluded.)

LLOYD CUTLER

CERTIFICATE OF NOTARY PUBLIC & REPORTER 141

I, BRENDA M. SMONSKEY, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Brenda Smonskey
Notary Public in and for the
District of Columbia

My Commission Expires SEPTEMBER 14, 1996

WILMER, CUTLER & PICKERING
2445 M STREET, N.W.
WASHINGTON, D.C. 20037-1420
TELEPHONE (202) 663-6000
FACSIMILE (202) 663-6363

WASHINGTON
LONDON
BRUSSELS
BERLIN

November 8, 1995

Robert Giuffra, Esq.
Chief Counsel
Senate Special Committee to Investigate
Whitewater Development Corporation and
Related Matters
Washington, D.C. 20510-6075

Dear Mr. Giuffra:

Attached please find an errata sheet noting the errors in the deposition of Lloyd Cutler. Please feel free to call me should you have any questions.

Sincerely,

Gail C. Bernstein

DEPONENT: LLOYD N. CUTLER

ERRATA

PAGE	LINE	CHANGE FROM	CHANGE TO
34	1	,some	,at some
34	2	present	present,
35	2	it had for	it had to
35	14 & 15	Mr. Summers,	Mr. Sommers,
35	22	should do	should we do
37	1	Mr. Summers	Mr. Sommers
43	19	approval and reached	approval or reached
48	17	that would appropriate	that would appear appropriate
48	20	I think, I had	I think, had
53	3	Secretary what	Secretary of what
53	4	understanding the way	understanding of the way
62	21	call from any member	call to any member
71	14	want to have	want to show
73	12	means deputies	means depositions
78	9	Bentsen and I did speak	Bentsen and that I did speak
78	14-15	Secretary Knight	Mr. Knight
83	13	after they would	after they had
83	14	receive this thing,	received this letter
100	4	I see that	I thought that
104	1	clear by the time	cleared by the time

DEPOSITION OF DAVID L. DOUGHERTY
IN RE: S. RES. 120

MONDAY, NOVEMBER 6, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of DAVID L. DOUGHERTY, called for examination pursuant to notice of deposition, at 4:35 p.m. in Room 534 of the Dirksen Senate Office Building, before FRANCES M. FREEMAN, a Notary Public within and for the District of Columbia, when were present:

MICHAEL P. O'CALLAGHAN, ESQ.
Majority Associate Special Counsel
ANDREW M. SCHAUER, ESQ.
Minority Assistant Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

LENORE MINTZ KAPLAN, ESQ.
U.S. Department of the Treasury
Office of the General Counsel
1500 Pennsylvania Avenue, NW
Washington, DC 20220
On behalf of the Deponent.

CONTENTS

Witness	Examination
David L. Dougherty	
by Mr. O'Callaghan	3
by Mr. Schauer	89
by Mr. O'Callaghan	100

3

Thereupon,

DAVID L. DOUGHERTY

was called as a witness and, having been first duly sworn by the notary public, was examined and testified as follows:

EXAMINATION

BY MR. O'CALLAGHAN:

Q Mr. Dougherty, my name is Michael Callahan. I'm special counsel for the Majority on a special committee.

This deposition is conducted pursuant to Senate Resolution 120. The resolution establishes a special committee administered by the banking committee to conduct an investigation involving the Whitewater Development Corporation, Madison Guaranty Savings and Loan Association, Capital Management Services, Incorporated, the Arkansas Development and Finance Authority, and other related matters.

Section 1-B(2)E of Senate Resolution 120 authorizes investigation and public hearings into whether the report issued by the Office of Government Ethics on July 31, 1994, or related transcripts of

4

deposition testimony:

One, were improperly released to White House officials or others prior to the testimony before the Committee on Banking, Housing, and Urban Affairs pursuant to Senate Resolution 229;

Or, two, were used to communicate to White House officials or to others confidential RTC information related to Madison Guaranty Savings and Loan Association or Whitewater Development Corporation.

And this section will be the main focus of today's deposition.

A Could I see a copy of that section?

Q Sure.

A Thank you. It is, once again, what section?

Q 1-B(2)E.

A Okay.

Q Beginning on page 3?

A Okay. Thank you very much. May I -- I notice the letter requested my appearance today, my name was misspelled. May I give the Reporter my

5

proper spelling of my name?
Q Oh, yes, please do.
The deposition today is in advance of public hearings. They are likely to begin tomorrow. You may be called to testify at the hearing. We'll notify counsel if that is necessary and let you know.
Today I'm going to ask you a series of questions, and you're testifying under oath. If you don't understand a question, let me know, and I'll rephrase it. If you need a break, also let me know, and we'll take a break.
The stenographer is preparing a record of questions and answers. The deposition will be treated as committee confidential until the commencement of the hearings. We also ask that you treat the substance of the depositions as confidential as well.
Prior to the hearing you will receive a letter from the committee or -- because the committee did -- the hearings are so -- only a day away, we may call you and fax over a letter.
A Can I ask that you call the Treasury

6

Department Counsel --
Q Certainly.
A -- instead of me directly?
MS. KAPLAN: I believe you know there is a continuing objection to your request for the confidentiality of the proceedings in which Mr. Dougherty works with many of the other witnesses that have been involved with the production of documents in the past.
The day-to-day business might require him to talk about something related to these proceedings. I just want it understood that --
MR. O'CALLAGHAN: You're not acceding to the request?
MS. KAPLAN: It may not even be possible to -- in view of the nature of his work, in the work of everybody else in the department that he works with, just so that's understood.
BY MR. O'CALLAGHAN:
Q Also prior to the hearings, and this transcript will probably be ready tomorrow, late afternoon, we have a one-day turnaround, we'll be

7

able to -- if you are going to testify, we'll be able to release it to you right away or otherwise, and we'll provide you with an errata sheet.

You can make any corrections and turn them back into the committee as soon as you finish.

A Fine. Once again, I ask you to please go through my attorney.

Q Yes. When I say you, I'm also referring to your counsel, how ever you would like the information transmitted.

A Counsel represents the department, not me personally.

Q Are you represented by counsel today?

A No, I'm not.

MR. O'CALLAGHAN: Is this counsel for the Department of the Treasury?

MS. KAPLAN: I'm counsel for the Department of the Treasury.

MR. O'CALLAGHAN: Please state your name.

MS. KAPLAN: My name is Lenore, that's L-E-N-O-R-E, middle name Mintz, M-I-N-T-Z, last name Kaplan, K-A-P-L-A-N.

8

MR. O'CALLAGHAN: Objections to the form of the questions will be noted for the record. Counsel may object on grounds of privilege or irrelevance, and the committee chairman may rule on objections where the witness refuses to answer a question.

BY MR. O'CALLAGHAN:

Q Would you please state and spell your full name for the record.

A David Lee Dougherty. It is spelled D-O-U-G-H-E-R-T-Y.

Q Are you aware of the various document requests that the committee made to the Department of Treasury?

A I'm sorry, can you --

Q Are you aware of the various document requests that the committee made to the Department of Treasury?

A With respect to Whitewater?

Q Correct. This committee with respect to White House Treasury contacts and Whitewater otherwise.

9

MS. KAPLAN: Can we just clarify? When you say various, you're referring to specific requests, because there have been --

BY MR. O'CALLAGHAN:

Q I believe there have been a number of requests in connection with the content of these depositions and this round of hearings, and I'm asking if you're aware of any of the requests.

A I'm aware of the September 27, I believe, request for documents subject to this upcoming hearing.

MS. KAPLAN: This year, that would be --

THE WITNESS: 10/27/1995.

MS. KAPLAN: Okay. There was one on September 12.

THE WITNESS: I'm sorry. Please let me correct myself. I'm aware of the initial request for production for these hearings. I really don't know the date.

BY MR. O'CALLAGHAN:

Q Did you conduct any search for responsive documents, notes, reports, memoranda?

10

A Yes.

Q To your knowledge, have all responsive documents been produced to the committee?

A Yes, they have.

Q Are you aware of any documents that were previously under the possession, custody or control of the Department of Treasury that were responsive to the request that have since been lost, destroyed, or otherwise disposed of?

A No.

Q Have you spoken with anyone other than counsel prior to this deposition with regard to substance of the deposition?

A In as much as I don't know what the substance is or didn't know even precisely that -- even this much until I read it, I may have without being aware of it. Oh, I certainly have. Yes, I certainly have.

The general subject of the OGE report, the transcripts, and the like, certainly I have discussed that with any number of people over the last several months.

11

Q But in connection with preparing for your deposition, have you spoken with anyone about it?
A Any government official?
Q Anyone at all, actually.
A Anyone at all in connection with preparing for this deposition today?
Q Yes.
A Yes, I have.
Q Who have you spoken with?
A I have spoken with a counsel, an attorney that I retained to advise me regarding this appearance. I have spoken to members of my family. I have spoken to friends.
Q Anyone at the Department of Treasury?
A In preparation for this?
Q Correct.
A Only Lenore and Mr. Buckles.
Q Mr. Buckles' first name is Brad?
A Bradley.
Q Have you spoken with any of the witnesses that have testified before the committee?
A I'm only certain of two people -- the names

12

of two people who have -- well, I don't know of anyone who has testified before the Select Committee, but I know the names of two people who have given depositions.
Q Have you spoken --
A I have spoken to just my immediate -- or my -- Ken Schmalzbach and Stephen McHale. Ken Schmalzbach is the assistant general counsel that I report to, and Stephen McHale is deputy assistant general counsel, and I report generally to him as well as to Mr. Schmalzbach.
Q Did you discuss with them the substance of their depositions?
A No, I did not.
MS. KAPLAN: I would just like to note for the record that Mr. Dougherty did not know about the fact that he would be called for deposition until this past Friday, November --
THE WITNESS: I believe it was -- I believe it was Thursday.
MS. KAPLAN: Okay, Thursday. Brad Buckles probably called you late Thursday then.

13

THE WITNESS: That's right, late Thursday.
MS. KAPLAN: And up until then, he had no idea he was going to be called for the deposition.
BY MR. O'CALLAGHAN:

Q What is your present business address?
A 1500 Pennsylvania Avenue.
Q And your present position?
A Attorney advisor.
Q And who is your employer?
A Department of the Treasury Legal Division.
Q Is there a specific office within the legal division that you work for?
A Office of the General Counsel, Assistant General Counsel for General Law and Ethics.
Q Could you please review your employment history over the last five years?
A Yes. I was at the Department of Justice in the civil division in 1990. Let's see. I went to work there in 1990. I came to the Department of Treasury in 1993, December of 1993.

14

Q And what position did you -- were you hired for in 1993?
A The position I now have, attorney advisor, in that division or the organizational structure.
Q What was your position in the DOJ civil division?
A Attorney.
Q During the period March 1 through August 5, 1994, who did you report to during that time period?
A Ken Schmalzbach and Stephen McHale.
Q What were their respective titles at that time?
A Ken Schmalzbach is assistant general counsel. McHale is deputy assistant general counsel, and they both were at that time as well.
Q What was the name of the office you were working in at the time?
A I believe it was then the assistant general counsel for administrative and general law. The name was changed after August.
Q Did you have anyone who reported to you during that time period?

15

A No.
Q During the period of March through August 5, 1994, what were your primary responsibilities in the office of administrative and general law?
A My primary responsibilities to advise departmental offices and occasionally general counsel regarding matters involving document production, Freedom of Information Act requests, Privacy Act matters, Federal Records Act matters, confidentiality provisions, Trade Secrets Act, privileges.
That kind of encompasses a lot of material that has to do with providing information.
Q And during this time period, were you working on any matter that -- any specific matter that took up a majority of your time?
A May I speak to counsel?
MR. O'CALLAGHAN: Sure.
(The witness and counsel conferred.)
MS. KAPLAN: Can we go off the record for just a second?
(Thereupon, a discussion was held off the record.)

16

MR. O'CALLAGHAN: Back on the record.
THE WITNESS: Could you restate the question, please?
BY MR. O'CALLAGHAN:
Q Sure. I believe the question was, Was there a certain project during that time period that took up the majority of your time?
A Yes. There were two in the period of March -- beginning in March, and I'm not exactly certain when it ended.
It ended with the time of the production of documents pursuant to the subpoena issued by independent counsel, Robert Fiske.
The second matter in that time period began in approximately July 1, with a request from the Senate Committee on Banking and Finance, for documents related to Madison Guaranty and Trust.
I worked on the production of documents to the committee and to the House Committee of Banking and Government Affairs, I believe, chaired by Congressman Thusalis (ph) for similar information all during that time frame.

Q With regard to your production to the two congressional banking committees, what type of document -- what was the subject of the document request?

A They were both pursuant to resolutions of both houses. I'm afraid with such short notice, I had very little time to prepare. So I don't have the -- have it at my fingertips.

But both requests, both resolutions dealt with Madison Guaranty and Trust and its subsidiaries. And I believe both also dealt with the events surrounding the death of Vincent Foster.

Q Were there any requests with regard to information regarding White House Treasury contacts?

A Oh, yes. That was the focus of the inquiry.

Q During this time period, did you have any role in helping prepare the Secretary for testimony before the committees?

A Yes, I did.

Q What was your role in that?

A I was a member of a team of five attorneys,

in addition to -- my responsibilities were largely in the production -- of the actual production of the documents to the committees.

But in addition to that, was to examine the documents and become familiar with ones that -- become familiar with them all, as a matter of fact, and be able to advise Mr. McHale and Mr. Schmalzbach with respect to issues that had surfaced, in my opinion, that would be useful for the Secretary to be aware of in preparation for his testimony.

Q Who were the five people who you were working with on this?

A Robert McNamara, assistant general counsel, Ken Schmalzbach, assistant general counsel, Stephen McHale, deputy assistant general counsel, and Peter Rittling, an attorney advisor in the administrative and general law office with me.

Q During this time period, did you ever become aware that the Secretary had requested that the Office of Government Ethics provide him with an opinion as to the propriety of the Treasury White House contacts?

19

A Yes, I did.
Q And were you also aware that the Treasury Inspector General's Office and the RTC Inspector General's Office were requested to provide investigatory fact finding services to the OGE in helping them prepare the report?
A I would have to answer that question by rephrasing it, if I may.
Q Certainly.
A What I was aware of was the -- that the OGE had informed the Secretary that it was not an investigatory agency.
And subsequent to that, the two respective IGs conducted the investigations and submitted their -- the results of their investigations to the OGE, which subsequently issued an opinion based in part on their investigations.
Q Were you involved in any way in assisting the two different IGs, or rather the joint IG investigation?
A No, I was not.
Q Were you involved in any document

20

productions involved with that investigation?
A No, I was not.
Q Did your office refer to any of the documents that were produced during the course of the investigation in your preparation of the Secretary?
A Well, yes. We -- my office used -- I used -- people did use the transcripts of the depositions taken by the respective IGs. I reviewed some of those to assist in the preparation of the Secretary for his testimony.
Q When did you begin your review of the transcripts?
A Sometime -- around -- on or about the 20th of July.
Q How did your office receive copies of the transcripts?
A I'm not aware of what the arrangements were. They were there.
Q You were never told how your office came to have the transcripts?
A No. That was arranged by somebody else.
Q But you don't know who arranged it?

21

A No, I don't. I would say that it is highly likely that it was either Mr. McNamara or Mr. Schmalzbach or Mr. McHale.
Q How did you first come to see the transcripts? Where were they when you first saw them?
A A set -- one or more sets, I don't recall how many, were delivered to the area in my outer office.
Q Were they on a table or --
A As I recall, they were in a box on the floor.
Q And for what purpose did your office receive the transcripts?
A The only purpose that I was aware of -- there were two purposes that I was aware of -- was, one, to assist the Secretary in his testimony.
And secondly, was to serve as a conduit for providing -- for providing them to private counsel who were representing a number of Treasury witnesses.
Q So the Office of Administrative and General Law provided the witnesses' counsel with the

22

transcripts?
A Not exactly the Office, the decisions were one of the -- that the team had made, the top level of the team made.
I wouldn't want to say it was necessarily within the scope of the offices work. This team -- this team was operating somewhat independently in reporting to -- actually, I believe Mr. McNamara and Mr. Schmalzbach reported to Ed Knight, who was the executive secretary of the department at that time.
Q Who assembled the team?
A I don't know.
Q Do you know how you were chosen or how you were approached about it?
A I recall -- how I was approached about it was that the day after the -- I'm sorry, the Monday after the independent counsel's, Mr. Fiske's, subpoenas were delivered on the Department, were served on the department, I was asked by Mr. McHale to work with Mr. McNamara, and that was the beginning of the team.
Later on, somewhere before we produced the

documents, Mr. Rittling was asked to assist us.
Q During this time period, did you have any contact with Mr. Knight?
A In the period from March through August?
Q Correct.
A Yes, I did.
Q How frequently were you contacted?
A In March, I want to emphasize that I didn't do any preparation whatsoever regarding the period from March -- for this deposition regarding the period from March to July.
Q As best you can recall?
A So, the best I can recall, in the early part of the March period, in responding to the independent counsel, I was, for some -- at some times had, you know, more than once a day, contacted Mr. Knight.

In the latter part of the period in which we were responding to committee requests, congressional requests, I had very little contact with Mr. Knight.

Q How about specifically the month of July?

A Very little contact with Mr. Knight. I don't recall actually having any, although I might have had some in passing. My contacts in the month of July were almost entirely with the -- on the supervisory level were with Mr. Schmalzbach and Mr. McNamara.
Q Was there a specific reason why you had this contact with Mr. Knight during July?
A I'm not aware of the reason, other than the organization of the work was such that Mr. Knight didn't need to have us as day-to-day involvement, I think, is all he needed to have in March.
Q Was Mr. Knight involved at all in the transfer of the transcripts to the team?
A I have no idea.
Q Do you know if he was advised about it?
A I have no idea.
Q Do you know if he had any knowledge of it?
A I don't know if he had knowledge. I would have to say that he must have had knowledge once they had been transferred to the team.

He was aware of what the -- he was aware of

25

the team's work in a general sense.
Q What was the team's work with regard to the transcripts?
A Two things: Again, and I think I have stated this before, and I will state it again. One is that we reviewed them in order to assist the Secretary or assist in the preparation of the Secretary's testimony.
And secondly, we served as a conduit, or we served as a -- just a single source that -- private counsel for Treasury witnesses could obtain copies of them.
Q When you say you reviewed the transcripts for the Secretary, what did that review entail?
A My review entailed, I believe, reading three transcripts. My best recollection, it was Ms. Jean Hanson, who was then general counsel, Mr. Dennis Foreman, who was then deputy general counsel, and Mr. Joshua Steiner, who was Chief of Staff.
I read those depositions or those transcripts and summarized them in a series of short bullet-type memos, bullet-type summaries. And I

26

believe I produced what I had of those to the committee recently in this production. That is, I produced the summaries.
Q And did other people produce summaries of the other transcripts?
A Yes. I don't know how many transcripts there were. I don't recall how many transcripts there were, but they were divided up among several people. I believe in every instance the other people were also attorneys on the staff of the -- in the general counsel's office at the Department of Treasury.
Q Were they all members of the team that you referred to earlier?
A No. The only members of the team were the five that I told you.
Q And what people worked on the transcripts outside the five people you discussed earlier?
A I don't recall -- I'm sorry, I don't recall the names of any of -- well, I do. They were, as I said, they were all attorneys in the Office of General Counsel. One of them was a woman by the name

27

of Elizabeth Jones -- I'm sorry, Sara Jones, who is no longer with the -- who is no longer a government employee.

The others I, frankly, completely draw a blank on who they were. They came in for that -- they came in for that effort, and it was a two or three-day turnaround, very quick, and went back to their regular duties.

Q Who -- during the time period, who did Ms. Jones report to?

A Probably to John Bauman, I'm almost certain, Mr. John Bauman who is an assistant general counsel for banking and finance.

Q Who does Mr. Bauman report to? Who did he report to?

A He reported to Ms. Hanson, to the general counsel.

Q Any reporting obligations to Dennis Foreman?

A On Mr. Bauman's behalf?

Q Correct.

A I'm not aware of what his reporting

28

requirements were. In fact, with respect to anything involving Madison Guaranty and Trust, Ms. Hanson was recused from all matters.

I believe at one point -- I don't know what Mr. Foreman's role was at that time, so I really don't know what his reporting -- line of reporting was.

Q Do you remember the number of other attorneys that assisted the other attorneys from general counsel's office?

A I don't recall exactly. I think it was three, maybe four, in addition to the team. Or actually, Mr. Rittling and I were the only two people on the team who were actively reviewing these.

Q And creating the summaries?

A And creating the summaries. Right.

Q Who did the other three or four attorneys from Office of General Counsel report to?

A They would have reported in the normal course of things to one of the assistant general counsels.

For the purpose of these transcript

29

reviews, they were supervised by Mr. McHale, not by their, you know, their usual supervisors.

That applies to Ms. Jones as well as the other two or three whose names I can't recall.

Q Do you recall how these people were chosen to lend a hand?

A No, I don't know. I don't know how they were chosen.

Q What was done with the summaries after they were created?

A There was a meeting that Mr. McHale chaired. I'm not certain of the date. It was sometime during the week of July 25, I believe.

It was either -- it was the week of July 25 or the following week. It was sometime between July 20 and July 30. There was a meeting of all the people who had reviewed transcripts, and the summaries were there.

And we went around the room, each of us summarizing our summaries for Mr. McHale --

Q Oral summary for him?

A Oral summary -- for Mr. McHale's use in

30

preparing testimony for the Secretary.

Q If you think of the names of any of those other attorneys during any time of the course of the deposition, feel free to let me know.

A Sure.

Q Was anyone else at the meeting?

A Mr. McHale and the people who wrote the transcripts were the only people -- or wrote the summaries were the only people.

Q Where did the meeting occur?

A I don't recall. It was a conference room somewhere in the departmental offices.

Q And were the summaries distributed to anybody?

A They were distributed to the other authors of summaries. In other words, we all shared ours with one another.

Q That's during the meeting?

A At the meeting.

Q How about otherwise?

A I'm trying to recall. I have been unable to recall if they were distributed any further than

31

that.
They resided in a file, file cabinet, file drawer.
Q Where was that located?
A Right outside my office where all the other Whitewater documents were kept, and they were kept along with the transcripts in a separate drawer that was just kept for that.
Q Were different people on the team provided with specific copies of summaries or were they kept in one place or were there more than one copy?
A Different people on the team -- any of the five people on the team could have had access to them if they had a need to.
Q Was Mr. Knight provided with any summaries?
A I do not know.
Q Do you know if he was provided with any copies of the transcripts?
A I don't know.
Q Any of the summaries that were prepared, did any of those contain confidential information, RTC confidential information in them?

32

A Not that I'm aware of.
Q Do you know if any of the -- you said you did the Hanson, Steiner, and the Foreman summaries. Did any of those contain any specific reference to any confidential information regarding the RTC criminal referrals?
A No, they did not.
Q I would like to show you a document which was produced to the committee.
It's a multi-page document, Bates stamped 1 -- excuse me, 015244 through 015335.
I would like to take you -- have you take a look at it and show it to your counsel as well and ask you first some general questions about it, and then if I have specific questions, I will direct you to specifically -- draw your attention to it.
MR. O'CALLAGHAN: Off the record for a moment.
(Thereupon, a discussion was held off the record.)
BY MR. O'CALLAGHAN:
Q I just showed you a document. I'll give a

33

brief description. You let me know if I'm mischaracterizing it.

It says multi-page document. The cover page says print file list. It is dated 7/28/94, 12:10 p.m. There is a computer document listing here. It is it says file list. C:\DATA\WP\MADISON\SUMMARIE, spelled, I-E, backslash -- two stars and it has got a list of -- and it has a list of 26 names, which appears to reference numerous documents in this larger document, which appear to be summaries of depositions that were conducted.

Have you seen this document before, the documents contained in it?

A I have seen at least one page in the course of another investigation. I have seen -- some of the other pages look familiar to me, and I believe I have seen some of them.

There are some pages, particularly the pages with the handwritten name on them, I have never seen those before. The typed pages with the -- yes, the typed pages that have page numbers on the side,

34

let me look at one at random here if I can find one.

I have seen some of those before. I can't recall if I have seen all of them.

Q And you are referring to numbers in the left margin at the paragraph. Correct?

A That's right.

Q What is your understanding as to what this document contains?

A Those appear to be transcripts -- those appear to be summaries of the transcripts of summaries of the kind that I earlier referred to.

Q These look like copies of the deposition transcripts that were done by --

A They look like it -- they look like it because of the page number, that particular style that they have.

Q In a moment I'm going to ask you to identify the -- certain documents here, which seem to refer to Ms. Hanson's deposition summary and Mr. Steiner's and Mr. Foreman's. Did you have a chance to look at those when you reviewed the document?

A Just now?

35

Q Yes.
A Yes. I mean, I didn't read them carefully no.
Q Do they appear to be the summaries that you had done?
A I couldn't tell. That was 15 months ago. I haven't -- I have not reviewed them even once since that time.
Q Have you seen the cover page before that lists all the different documents?
A I have.
Q Where have you seen that before?
A I have seen it in the course of the investigation.
Q I would like to show you another document, which is a multi-page document. The first page appears to be a fax cover sheet from the White House, with the Bates beginning at S007108.
MS. KAPLAN: I'm sorry, say it one more time.
BY MR. O'CALLAGHAN:
Q S007108, 7109, 7110, and 7111.

36

Take a moment to review that, and let me know when you have had a chance to scan the document. After reviewing the document I just showed you, there appears to be a deposition summary of a Steve Katsanos in there, which also has numbers in the left-hand margin beginning at the paragraphs.
Does that appear to be one of the deposition summaries prepared by your office?
A It appears to be.
Q Do you know if copies of the deposition summaries were ever transferred to the White House?
A I'm not aware that they were.
Q Did you --
MS. KAPLAN: Can I just ask you, is this S number -- can I ask you whose production this would be?
MR. O'CALLAGHAN: I believe it is the White House's production.
BY MR. O'CALLAGHAN:
Q During July of 1994, did you have any contact with anyone of the White House counsel's office.

A Yes, I did.
Q Who did you have contacts with?
A Names that I can remember are Sharon Conaway, mentioned here, Jane Sherburne, Sheila Chesterton, and a -- the first name is Sean. I don't recall the last name.
Q Do you recall whether -- does it refresh your recollection if I ask whether you ever sent any of the copies of the summaries to a Sharon Conaway?
A I don't recall ever sending any over to Sharon Conaway.
Q Do you recall if anyone at the White House ever made a request to you for transcripts?
A No. I don't believe anyone at the White House ever made any request to me for transcripts, me directly.
Q How about for summaries?
A I may have spoken with one of the individuals in the white House counsel staff -- might have called me to ask me if the summaries were available to them.
Q Do you have any recollection of who that

might have been?
A No, I don't.
Q When that might have happened?
A It would have been in the last two weeks of July.
Q Did you receive more than one request for summaries?
A I don't recall. Let me clarify. The conversations were not requests of me for summaries. They were questions -- the question was whether -- are those summaries available, will they be available.
Q Were the requests made to you or someone else?
A The request that I just stated were made to me, the question.
Q Whether they were available?
A Whether they were available. A request for copies of them, I don't recall that was being made to me.
Q Do you recall whether -- what your reply was as to whether they were available?

39

A Oh, I said I have to check with my superiors.
Q And did you do that?
A No. The people said -- whoever I talked to said that they would follow up themselves.
Q For the record, I'm going to more fully describe the document I just showed you. The fax cover page says the White House on it. It is dated 7/27/94. It is to Bill Taylor. It is from Sharon Conaway.
The comment says, RTC will not release transcripts before tomorrow, but I'm able to send you this IG summary for you and Pat to see, but not public.
Do you know whether the White House ever -- were you ever aware that the White House sent copies of deposition summaries to any of the lawyers for any of the witnesses involved in the hearings on the White House Treasury contacts?
A No. I'm not aware that they did.
Q Do you know who Bill Taylor is?
A No. I have never seen the name before.

40

MS. KAPLAN: What is the date on that fax?
MR. O'CALLAGHAN: 7/27/94.
BY MR. O'CALLAGHAN:
Q I have got another document here Bates stamped S007913. It is a one-page document. It's got a heading privileged and confidential attorney work product, draft July 27, 1994, and it reads, Jane.
And the second paragraph reads too, David Dougherty at Treasury told me the RTC has not yet agreed to release his transcripts, but may do so tomorrow. He said they may seem very touchy about the transcripts, and I expressed to him some dismay that Treasury had given them to the White House.
RTC's concern is that it does not want non-public information released that it can impair its investigation. He stressed that it is important that nothing in the transcripts be made public, at least with attribution, until they are released.
I told him we understood that. This afternoon he gave me summaries of the transcripts that he had not realized we did not have and told me

41

that the transcripts could be given to witnesses and their counsel.

I faxed the Katsanos summary of three pages to Bill Taylor and corrected one statement that inaccurately reflected the testimony. I told Taylor's associate the Treasure is concerned about not attributing information to the transcripts.

Why don't you take a look at that.

Have you had a chance to review it?

A Yes.

Q First of all, have you seen that document before?

A No, I haven't.

MS. KAPLAN: Can you just wait one moment and let me finish reading it?

MR. O'CALLAGHAN: Sure.

MS. KAPLAN: Thank you.

BY MR. O'CALLAGHAN:

Q After having me read the contents of this document, you have also read it, does that help refresh your recollection as to whether you provided any summaries to anyone at the White House?

42

A No, it does not. I recall having a conversation with someone -- one of the four people that I mentioned. It obviously wasn't Jane. I recall having a conversation in which I stated to them that the RTC --

Q When you say them --

A Stated to the person from White House counsel, I recall saying that the RTC had not agreed to release its transcripts. The rest of it, I don't have any recollection about.

Q Do you recall whether -- well, does it help refresh your recollection if I ask the question whether or not you remember ever asking for copies of transcripts or summaries back from the White House?

A No, I don't recall that at all.

Q Do you know if -- does this help refresh your recollection as to whether anyone at Treasury provided White House with copies of summaries?

A No, it does not.

Q Around July 27, were you aware that the RTC had some concerns about non-public information contained in the transcripts?

43

A Yes, I was.
Q When did you become aware of that?
A I'm not certain when I became aware of it. I was aware for -- probably from early that -- I was probably aware from the first of July, maybe even earlier, that the general counsel of RTC, Ellen Kulka, was concerned with Treasury not providing any information to anybody that came from RTC.
Q How did you become aware of that?
A I believe Mr. Schmalzbach told me of a telephone conversation he had with her.
Q He had had a phone call with --
A It could have been Mr. Foreman, not Mr. Knight. It could have been Mr. Foreman who had that telephone call with Ms. Kulka.
That telephone call had to do with the document production to the Senate. So I was aware from that point that Ms. Kulka was concerned about RTC information.
Q Was Mr. Foreman involved in any of the document productions?
A I don't recall.

44

Q I mean, did he lend assistance to your group?
A In the very beginning of the document production for Mr. Fiske, he provided advice to us regarding our ethical considerations in the matter.
I don't recall -- I have one recollection of one other involvement of Mr. Foreman's, and that had to do with a production or providing something to counsel for Ms. Hanson.
He was called -- I happened to be in his office, and he got a phone call from Audrey Pitt, I believe was the name. He was Ms. Hanson's counsel.
And I overheard parts of the conversation, which basically was that he couldn't agree to Ms. Pitt's demands.
That was --
Q Was that Harvey Pitt?
A It is Audrey Pitt, and I forget Audrey's name. This was Audrey, Harvey Pitt's partner. I'm sure her name is in the record.
But that's the only other time. That was probably before the special counsel -- Fiske had

45

completed the investigation. That was the only other time I recall Mr. Foreman's involvement.
Q How much contact did you have with Mr. Foreman during July of '94?
A Practically none. Mr. Foreman was going to be a witness before the committee in the Senate, and once I became a possibility, we built a wall between the team or at least between some people on the team and the witnesses.
Q How is that wall constructed? What did it consist of?
A It was understood that we did not talk about the matter in the presence of witnesses.
Q Any formal documents created to establish a wall?
A Not that I'm aware of.
Q You said that some of the people were walled off. Were some people not walled off?
A I'm sorry. Did I say some of the people were walled off?
Q I believe so. You weren't inclusive of everyone.

46

A Well, I didn't intend to be. All of the witnesses were walled off from all of the five people on the team.
Q The Secretary was going to be a fact witness. Is that right?
A That's right. But he was not walled off from the team. We were preparing the Secretary's testimony.
Q So it was with the exception of the Secretary?
A With the exception of the Secretary. That was my understanding.
Q You said you first saw the transcripts around the 20 of July, you think?
A Probably right around that date.
Q Could it have been earlier?
A It could have been.
Q Did you see them as soon as they were received by your office?
A I don't know.
Q Was these -- were these documents that you were anxious to get to help you in your preparation?

47

A No, not necessarily.
Q Do you know if before the 20th if more than one request had gone the Inspector General's office to receive copies of the transcripts?
A I have no idea.
Q Do you know when the first requests were made?
A No, I don't.
Q Do you know who will made the request, and who they made it to?
A No, I don't.
Q Were you ever told?
A No, I wasn't, not that I recall.
Q Other than the review that you conducted of the transcripts, which involved preparing summaries of the transcripts, did you conduct any other type of review of the transcripts?
A None other than being a participant for, at least, part of the meeting that I mentioned that Mr -- when all of people who reviewed transcripts met together, I was at that meeting, at part of the meeting. I wasn't at the entire meeting.

48

So I heard other people report on their summaries.
Q Was that the sole purpose of that meeting, to discuss the summaries, or were there the other things discussed?
A As far as I know, that was the only thing discussed.
Q And you believe that occurred the week of the 25th, is that correct, or thereafter, soon thereafter?
A Yes. It could have been the following week, though.
Q Did you ever receive a copy of a draft report prepared by the joint IG investigation?
A I received a draft chronology.
Q When did you receive that?
A I don't recall the exact date.
Q Did you receive it --
A My understanding was that it was -- my understanding when I received it was that it had just been prepared. In other words, it was --
Q Hot off the press?

49

A -- hot off the press, as they say.
Q Had it been -- had a copy been delivered to the Secretary, specifically?
A I don't know.
Q The copy of the draft report that you received, was that given to you on -- to receive on behalf of the Secretary?
A I don't know. It was given to me probably by Mr. McHale to review against, I guess, against transcripts, summaries, or documents to review it for accuracy. I was asked to review it for accuracy.
And you have the document that we produced from my office that is a several-page document that has the suggested changes.
As a result, that was partially a result of my review. I think other people participated in the production of that document -- I mean, in the preparation of that document.
Q Do you know how many people participated?
A No, I don't. I had completely forgotten about it until I was preparing for today's deposition. I only remembered it when I saw it.

50

Q So there are various people from the Office of General Counsel who were comparing the draft report with copies of the transcripts and the summaries and other documents for accuracy?
A I think it is more accurate to say there was more than one person.
Q More than one?
A I wouldn't say there were various persons.
Q Did do you recall whether Peter Rittling was one of the people?
A I don't recall.
Q I would like to show you a document, which bears the Bates 14934 through 14938.
The document I just handed you is entitled, Suggested Revision to IG Report. It has numbered headings, which refer to page numbers and then a bunch of paragraphs and handwritten notes. Have you seen this document before?
A I have not seen this exact document. I have seen a typewritten version of this, or I have seen the typed part of it without the marginal comments.

51

Q The same format?
A Yes. Let me clarify that. I have seen a document similar to this that looks like this without the marginal handwritten notes. I'm not certain whether the document I have seen is exactly the same as this one. It is the same style and format.
Q What do you recognize this document as being?
A It appears to me to be the factual -- suggested factual corrections to the IG report that I mentioned earlier that I had received -- I'm sorry -- the chronology. I had received the IG chronology, was asked to review it and see if there were corrections that needed to be made.
This appears to be either what I prepared or part of -- or what I prepared became part of this. I'm not sure which it is.
Q Do you recognize the handwriting appears on the document?
A Yes, I do.
Q Whose handwriting is that?
A Mr. McHale's.

52

Q Mr. McHale is the person you report to. Right?
A That's correct.
Q Just for clarity, I have a copy of a similar document. It is Bates stamp 14931 to 014933, which appears to be a later draft that incorporates the edits of -- or at least some of the edits of the one I just showed you.
MS. KAPLAN: In fairness to Mr. Dougherty, you're saying it appears to be a later draft?
MR. O'CALLAGHAN: I'll ask him.
MS. KAPLAN: With the pages -- it is very hard without comparing these line-for-line to know whether it contains those changes.
BY MR. O'CALLAGHAN:
Q I'm not going to ask you what changes were made; what ones were weren't made. But the document I just showed you beginning with 14931, is that an edition of suggested edits that were drafted by you or someone in your office?
A Can you restate the question?
Q Sure. Is this 14931 through 14933 a copy

53

of a draft that -- of a suggested edits were prepared by you or people in your office?
A It appears to be. In style and format, it appears to be similar to what 14934 through 14938 is, but I don't know whether it is -- it is clearly not exactly the same.
Q Did your office ever provide suggested edits to the IG's office on the draft report?
A I don't know. But could you rephrase that question, however? I don't know what you mean by my office.
Q Well, let's start with anyone on the team that was working preparing the Secretary?
A Oh, I wasn't sure what you meant. I don't know.
Q Do you know if anyone ever provided the IGs with a copy of edits prepared by the team?
A No, I don't know.
Q What was your understanding of the purpose of you and others reviewing the transcripts and the draft report to make suggested edits. Who were they intended for?

54

A My recollection of the event was that I was asked to review the chronology, point out any errors, and write those up and give them to Mr. McHale.
Q Were you ever informed of what purpose you were doing this for?
A No.
Q Were you told it was going to be used to brief the Secretary?
A No.
Q Were you ever curious as to why you were being asked to do it?
A Not really. This was a very busy time. There were many, many documents around and hearings beginning to begin. We worked seven days a week. Something that needed to be done, needed to be done. We did it, moved on.
Q You weren't told who the end user was for this document?
A I don't recall ever being told.
Q Were you ever told that the document or the suggested edits were requested by anyone working in connection the investigation?

55

A No, I was never told that.
Q Were you ever told that Francine Kerner had requested suggested edits to the draft?
A I don't recall being told that.
Q Do you know who Francine Kerner is?
A Yes, I do.
Q Who is she?
A Ms. Kerner is an attorney in the legal division of the Department of Treasury. She's assigned to the financial crimes network center, I believe it is the FINCNC (ck).
Q What was her position during March through August 1994?
A At some point during that time, and I don't know how much of the time, she was general counsel to the inspector general of Treasury. She may have been in an active position. I'm not aware.
Q Did you have any contact with her during this time period?
A The March --
Q The March through August time period?
A I had one contact, one official contact

56

with her that I know of that I can recall during that time period.
Q What was that?
A It was on July 30, the day that the OGE report was supposed to be delivered to Secretary Benson. It was a Saturday.
Ms. Kerner had come by the Department from her home, I understand. She told me she had come from home to get a copy of the OGE report.
It wasn't available while she was there. She saw me in the hallway and asked me if I would -- when it came in, if I would make a copy for her and leave it with the -- leave it at the guards' desk and call her and leave a message on her answering machine to pick it up.
As it turns out, the guards' desk did not want to take possession of it when we obtained it, so I called her and left a message on the machine that it would be in my office and to go get the guard to unlock the door for her.
That was the OGE report on the 30th of July.

57

Q You said earlier you became aware that the RTC concerns about release of confidential information --

A No. Let me clarify. What I said was that I was aware that the RTC was concerned that Treasury might release information that belonged to RTC, and it was up -- their concern was that RTC should make the decisions as to what information was released.

Q With regard to your offices, your -- with regard to your receipt and the people you were working with, the team, receipt of the transcripts, do you know if RTC was ever consulted before they were given to the team?

A I don't know.

Q Did you make any inquiries after you got the transcripts as to whether they had been consulted?

A I don't recall making any.

Q Did you know you were going to receive transcripts before you actually got them?

A I don't think I knew, no.

Q Nobody told you that you were going to be

58

getting transcripts?

A I don't recall anybody saying that. At that point, another piece of paper coming in the door was not something I welcomed, regardless of its content.

Q You reviewed a number of the transcripts. Is that right?

A I reviewed, to the best of my recollection, Mr. Steiner's, Mr. Foreman's, and Ms. and Hanson's.

Q How about when preparing the suggested edits, did you just review those three, or did you review more?

A I don't recall. It is likely that I would have looked in a transcript for a -- for a proper citation to a page. That is to say if the draft chronology said that somebody said something on page 12 of their deposition, I would look on page 12 to see if that statement was there.

Q When you reviewed the transcripts, after you reviewed them, were you aware that there was non-public, confidential RTC information in some of the transcripts with regard to the criminal

referrals?
A No, I was not aware of any non-public information in the transcripts.
Q Have you since learned there was?
A I have since -- I recall, probably from the hearings last August, the allegation being made that -- by RTC that there were -- that there was non-public information in the transcripts.
Q Have you had any discussions with anyone at Treasury about that issue?
A No, I have not.
Q Has Mr. Schmalzbach brought it up with you are Mr. McHale or anyone?
A No.
MR. O'CALLAGHAN: Off the record.
(Thereupon, a discussion was held off the record.)
MR. O'CALLAGHAN: Back on the record.
Q I show you a document with Bates stamps 015286 through 015291.
And it is looks like a summary of -- it says, Summary of Jean Hanson's IG statement, Part 1,

and later on, dated July 11, 1994. Then on Bates stamp 015289, beginning middle of the page has a heading, Jean Hanson, Part 2, July 15, 1994.
Take a look at that. Let me know when you have had a chance to review it.

61

6:00 p.m.

BY MR. O'CALLAGHAN:

Q Are the -- the document I just handed to you, is that a document you produced, created?

A It appears in style and format to be similar to the document that I produced that was the summary of Jean Hanson's IG statement.

Q Could you read to me the paragraph which begins with the number 30?

A Do you want me to read it out loud?

Q No. Just review it, and I'll ask you a question about it.

After reading that document, does that refresh your recollection as to whether any confidential RTC information with regard to criminal referrals were contained in any summaries?

A No, it doesn't at all.

Q Have you ever been advised to what the RTC considered to be -- let me rephrase -- withdraw that.

Have you ever been told -- have you ever

62

learned what has been identified as confidential RTC information that was contained in the transcripts?

MS. KAPLAN: Identified by whom?

MR. O'CALLAGHAN: Identified by anybody, first, then I'll ask more specifically.

THE WITNESS: Yes. I have learned what the RTC had identified in some transcripts -- what the RTC had identified in certain transcripts that they considered to be confidential, non-public information.

Q How did you learn that?

A I don't recall. Somebody pointed out to me that the redactions -- somebody pointed out to me in one or two transcripts that RT -- and told me that RTC had redacted the number 9 in a few paragraphs in some transcripts.

I don't recall who told me that.

Q Do you know if -- were you aware, without discussing the substance of the redactions, or any other redactions that were made to transcripts, whether the information was limited to --

A I'm aware that there were other redactions,

63

because I have seen the redacted transcripts, and they were at least a partial line that would be constitute more than the word 9 out of them.

I don't recall what is behind this.

Q Referring to the document I just showed you and the paragraph with number 30, do you recognize any of the information contained in that paragraph as information that was redacted from the transcripts by the RTC?

A No, I don't, other than the number 9.

Q Did Treasury ever provide the White House with copies of the transcripts in its possession?

A Yes.

Q When did that occur?

A To the best of my recollection, it was on Saturday, July 23.

Q Were you at work on the 23rd?

A Yes, I was.

Q Had you heard at any time prior to the 23rd that the transcripts were had been requested by the White House?

A I don't recall having heard that.

64

Q Did anyone relate to you any conversations they had with the White House people where they said they had been asked for copies of transcripts earlier?

A I was given a copy of a letter to Jane Sherburne that, I guess, kind of transmitted the transcripts, and it is in the record. I believe that if I saw that, I might be able to refresh my recollection about what I knew.

Q I might have a copy of it. I just handed you a one-page document, Bates stamp 6877, July 23, 1994, a letter to Jane Sherburne, which I believe is misspelled, and signed by Stephan McHale.

A In preparing for this deposition, I reviewed this document and concluded that the prior discussion referred to in paragraph 2 was prior to July 23, 1994.

Q And how did you come to that conclusion? Were you told about a discussion prior to the 23rd, or did you hear later about it?

A No. I -- just in reading the letter, it seemed to me that there had been a prior discussion,

65

and it didn't seem to me there was probably an opportunity to have had all of that discussion on the 23rd.

Q Why do you say that?

A These kinds of decisions were usually made at fairly high levels, and --

Q So you don't think this is just --

A I don't think this would have been something that could have been together -- this was an agreement that could have been put together on a Saturday.

Q So it wouldn't have just been a conversation between Mr. McHale and Ms. Sherburne to decide to make this transfer?

MS. KAPLAN: Can I ask him if he knows that?

MR. O'CALLAGHAN: Sure.

THE WITNESS: I'm sorry.

MS. KAPLAN: I'm asking if you know that --

THE WITNESS: Do I know what?

MS. KAPLAN: -- or if your --

66

MR. O'CALLAGHAN: I can withdraw the question. We can get there another way.

BY MR. O'CALLAGHAN:

Q Let me just -- I'm going to back you up a little bit and ask you, have you -- did you see drafts of this document prior to July 23?

A I don't recall ever seeing it.

Q Did Mr. McHale ever tell you that he had created a draft before the 23rd?

A I don't recall ever hearing that.

Q How about Mr. McNamara, did he ever talk about drafts of the letter?

A About drafts of this letter?

Q Correct.

A No, not that I recall.

Q Did you hear on the 23rd that a request had been made by the White House for copies of the transcripts?

A Yes, I did.

Q When did you first hear that?

A I'm not sure what time of day it was.

Q What time did you get in the office that

day?
A I probably wandered in around 9:30 or 10:00.
Q Wandered in around 9:30 or 10:00 Saturday is not too bad.
A It was those days.
Q Do you recall how soon after when you arrived in the office that you heard that the White House had requested copies of transcripts?
A No, I don't recall how soon it was.
Q What is your recollection of finding out about that the White House had requested copies of transcripts?
A My -- the best of my recollection, at some point that day Mr. McHale asked me to contact somebody in White House counsel's office, and I don't recall who it was, and to make arrangements to deliver the transcripts to her.
Q So the first you heard of it was when you were asked to arrange for the transfer?
A The first I recall hearing of it.
Q Was there a specific person you normally

contacted at the White House counsel's office that had you more dealings with?
A Not particularly -- I didn't have very many dealings, and so -- no, I don't -- probably -- no. No, I can't say who it was.
I can say that I did not typically talk directly to Jean nor did I talk the Mr. Cutler.
Q What did you do after he asked you to contact someone in the White House's counsel office to arrange the delivery?
A I called whoever it was that he had suggested.
Q Do you recall if it was in the afternoon, at night?
A Afternoon. My best -- to the best of my recollection, it was in the afternoon.
Q Any specific reason why you think it was the afternoon?
A Given the time I recall arriving at the office, the other things that were going on, I mean, I know other things were going on besides that, I'm sure I had things that were overdue from the Friday

69

before, and it would have been the afternoon.
Yes. It would have been the afternoon based on that, and this is an aspect that I have previously reviewed rather carefully and was able to refresh my recollection to remember devices to cause me to reach the conclusion that it was sometime in the afternoon.
Q What caused you to refresh your recollection in the past?
A Well --
(Thereupon, witness conferred with counsel off the record.)
BY MR. O'CALLAGHAN:
Q So I asked you how had you come to a --
A -- to refresh my recollection earlier?
Q Yes.
A It was in the course of another investigation.
Q Earlier that day, do you recall what you were working on at the office?
A No, I don't.
Q Were you reviewing transcripts?

70

A I don't recall.
Q You said you -- after you received the transcripts in and around the 20th, you thought you might have worked on them for two or three days to do summaries?
A The summaries, I recall, were done in a fairly short period of time.
Q Were they done by this time, by that Saturday?
A Saturday the 23rd? I don't think they were. In preparation for this deposition, I noticed one document that was produced from my office that was dated after the 23rd. In fact, I believe it was the Hanson summary, the Hanson transcript.
Q So after you made the phone call to the White House to arrange delivery, what happened next?
A We chose a convenient time. There may have been some period of time that passed. I don't recall. But subsequent to the phone call, I picked up the box that I had been told contained the transcripts. I looked in the box just to make sure it contained that and not something else, and it

71

appeared to contain the transcripts.
I carried them to the over to the old executive building, the 15th Street entrance -- I'm sorry, the 17th Street entrance.
Q Did the box contain anything other than transcripts?
A Not that I'm aware of, but I didn't unpack the box.
Q Where was the box located?
A It was on the floor outside my office, the outer office area.
Q You described your outer office area earlier. Is does that have a locked door to it, or is it an open area to the hallway?
A It is a locked door. It is opened when it's occupied, we keep the door open. It is locked when it is not occupied.
Q How many people share that open area?
A We have four attorneys, a paralegal, and a secretary. Four attorneys and paralegals in separate offices, and the open area is -- the secretary is there.

72

Q This box contains copies of the transcripts that was in --
A I was told that that's what was in the box.
Q You checked it. Right?
A I just opened to see -- that based in looking at the documents on top of the box, that's what they were.
Q They appeared to be transcripts?
A They appeared to be the transcripts.
Q Do you know where those copies came from?
A No, I don't.
Q Were they produced by anyone you were working with, any members of the team?
A I don't know where they were produced from.
Q Had you seen that box there before?
A To the best of my recollection, the first time I saw it was when I came in that Saturday morning.
Q So it was there when you came in?
A To the best of my recollection.
Q Do you know if those copies were made specifically to transfer the transcripts to the White

House?
A No, I don't know.
Q Have you ever heard that?
A No, I don't recall ever hearing that.
Q Do you recall exactly what time you went over to the White House?
A I don't recall exactly what time, no.
Q Did you have to sign in?
A No, I did not. We made an arrangement whereby the recipient -- the recipient would meet me. The recipient met me in the lobby of the old executive office building. I never went into the White House with these -- on any matter that dealt with this.

But I met her in the lobby of the old executive office building on the public side of the security desk. So I didn't need to go through security; therefore, I didn't need to sign in.
Q There is a lobby on the 17th Street entrance?
A That's right.
Q Did you have to sign in or sign out a

Treasure on Saturday when you came in and out?
A No, we didn't.
Q Was there a guard on duty?
A Yes, there was.
Q Secret Service?
A Uniformed Division, Secret Service. Correct.
Q Did you get a receipt from the White House?
A No, I did not.
Q Who met you at the door to receive the boxes?
A The person I talked to on the telephone, to the best of my recollection.
Q You don't remember who that is?
A No, I don't.
Q Do you know if it was a man or woman?
A It was a woman.
Q Do you know what color hair she had or what she was wearing?
A It was a Saturday, and I recall that we were all -- it was a hot day in July. We were all came of dressed down.

75

I don't recall what color hair she had, no.
Q Was anyone with her when she came and picked them up?
A Not to my recollection.
Q How heavy was the box?
A It wasn't very heavy. I mean, it wasn't difficult to carry along the stretch from 15th street to 17th Street.
Q It was hot out there. Right?
A It was hot, but I didn't have to stop and set the box down. She was able to pick it up as well when I got there.
Q Were you told that that contained all the transcripts that had been taken?
A No. I wasn't told anything about the details. It was, this is -- these are the transcripts that we're going to provide the White House.
Q Did you have any reaction to the fact that you were being asked to deliver the transcripts to the White House?
A No.

76

Q You said earlier you were aware that the RTC was concerned about Treasury releasing information they considered to be RTC information. Was there any consideration given to whether the transcripts contain RTC information?
A I don't know if there was.
Q Were you involved in any discussions of that matter?
A Not that I recall.
Q Did anyone consult with the RTC before the transcripts were handed over to the White House?
A Not that I know about.
Q Was Mr. Foreman consulted about this transfer before it happened?
A Not that I'm aware of.
Q How about Ms. Hanson?
A Not that I'm aware of.
Q Did you go over by yourself when you made the delivery?
A Yes, I did.
Q I would like to turn your attention to the transmittal letter again of the 23rd. You said --

77

looking at the second paragraph, you said that was a -- this is, I believe, a discussion or process you didn't think could have been done on a Saturday. Is that right?

A Couldn't have -- that's right. I don't think that a discussion of that nature that came to that conclusion is likely to have come out of the blue on a Saturday morning.

Q Are you aware of any discussions regarding any restrictions put on the transcript that occurred before the 23rd?

A No, I'm not. I drew -- I draw that conclusion only from my general knowledge of how decisions are made in the Treasury Department.

Q Did -- have you ever learned who asked for the transcripts from the White House, who made the request?

A I have been told it was Mr. Cutler.

Q Who were you told by that -- excuse me, who told you that?

A Mr. McHale.

Q When did he tell you that?

78

A I don't recall.

Q What did he tell you?

A What -- I don't know the exact --

Q Did he say, Cutler asked for the transcripts or --

A I don't recall the exact language, only that this was something that Mr. Cutler wanted.

Q Was that -- did he tell you contemporaneous to or relatively contemporaneously to when you delivered the transcripts, or was it --

A Relatively contemporaneous. I mean, it wasn't -- I don't recall it being part of the direction to take them over there.

It may have occurred earlier in the day. It may have occurred the day before. It may have occurred a couple days later.

Q This might help you out. Were you surprised that you were being asked to take the transcripts over, or had you had an idea they were going to go over?

A I didn't have any idea they were going to go over, but I wasn't surprised.

Q Why weren't you surprised?
A What was there to be surprised about?
Q You saw nothing irregular about it?
A No.
Q Are you aware of any discussions that occurred or took place between Mr. Cutler and Secretary Benson with regard to transcripts?
A No.
Q Have you ever been told about any?
A No.
Q Has anyone ever told you that the Secretary wanted to accommodate Mr. Cutler in his request for the transcripts?
A I don't recall that anyone has ever told me that. I think I have seen it written some place. It might be written in this letter. I don't know.
There are documents -- there are documents that state that the -- that Mr. Cutler wanted to take a -- in the interest of time and resources, wanted to use the IG's interview deposition or the IG's transcript rather than conduct his own.
There are documents to that effect that I

have seen.
Q Were you aware of any those considerations that were going on during March through August of '94?
A Can you be a little more specific?
Q Sure. Any conversations with regard to facilitating either the White House's investigation or the IG's investigation to the sharing of resources.
A Was I aware of any conversations about that --
Q Yes.
A -- in that whole period of time? I'm aware that at least on one occasion subsequent to the -- to Mr. Fiske's report, there were -- there was a discussion at fairly high levels between Mr. Knight and probably Mr. Cutler, perhaps Mr. McClarty.
I'm not sure it was a very high level. I was told that the resolution of the matter of the sharing of resources would be determined -- would most likely be determined as a result of the conversation between Mr. Cutler and Mr. Benson.

I don't know if that conversation ever occurred, but I was told that that's how -- that's how it might happen.

Q Do you recall what particular matters needed to be resolved?

A No, I don't.

Q What did you hear about this conversation?

A I heard about that in Mr. McHale's office, whether he specifically was talking to me or whether I was there doing other things -- in the conversation.

Q Do you recall if anyone else was there?

A No, I don't.

Q Do you recall whether he was talking to somebody on the phone?

A I don't recall.

Q Have you heard of any other conversations on the subject?

A Could you be a little more --

Q Who was sharing the resources in facilitating each other's investigations?

A Conversations between --

Q -- between anyone on this subject of the White House and IG facilitating each other's investigations?

A Let me get clear what you're referring to. You're referring to the White House and the IG's sharing of resources?

Q Correct.

A Oh. Well, let me correct my earlier statement about the conversation between Mr. Cutler and Mr -- and Secretary Benson. That was not about the IG report. That was about the document production to the Senate.

Q Being prepared by --

A I prepared -- I did the production or the team did the production. I did most of the work on it. And there was that -- there was a discussion subsequent to the production of the -- to the Senate, there was a discussion in Mr. McHale's office regarding our sharing our production with the White House, and the White House sharing their production with us.

And the upshot of that conversation was,

according to Mr. McHale, was that this might be resolved by Mr -- in effect, he said this may be -- have to be resolved by Secretary Benson speaking to Mr. Cutler.

Q Do you know if it ever was resolved that way?

A No, I don't know.

Q Was it eventually resolved?

A It was eventually resolved.

Q Did the -- did your office provide any document to the Treasury IGs to help assist them in their investigation?

A Clarify what you mean by my office.

Q I'm sorry. Anyone in the Office of General Counsel?

A Provide information to the IG?

Q Documents.

A Oh, I don't know for sure. I don't know whether we provided any documents.

Q Do you know if the Office of General Counsel provided White House documents to the Inspector Generals?

A I don't know.

Q Do you know if -- well, the IGs made a request to the White House. Is that right?

A I don't know.

Q Do you know if documents that were requested by the IGs were first delivered to the Office of General Counsel and then transmitted to the Inspector Generals?

A I don't know. I had no involvement in the IG investigation.

Q Who received for the Office of General Counsel in preparation for the hearings, who received the White House production in connection with that?

A I don't know who received it. It ended up in the -- in our document file.

Q The group you were working with had control over those documents. Is that right?

A That's correct. The team had control over those documents.

(Thereupon, a discussion was held off the record.)

MR. O'CALLAGHAN: Back on.

85

BY MR. O'CALLAGHAN:
Q With regard to the documents that were handed over to the White House on the 23rd, the documents you delivered, what was the process of Treasury that allowed those transcripts to go over?
Who was involved in the decision making process to have them delivered over?
A As far as I know, that was the decision of the more senior people on the team.
Q Do you know specifically who was involved with that?
A No, I don't know.
Q Who are the more senior people on the team?
A Mr. McNamara, Mr. Schmalzbach, Mr. McHale.
Q Who did they consult with?
A With regard to?
Q The transfer of the transcripts.
A I don't know.
Q Did they have discussions with Mr. Knight?
A I don't know.
Q Did they have any discussion with the inspector general for Treasury?

86

A I don't know.
Q Have you ever heard that?
A I don't recall ever hearing that.
Q Did you have any contact with the Treasury inspector general during the March, August time period?
A Other than the -- with the inspector general himself, the acting inspector general, Mr. Sesca (ph)?
Q Yes.
A No.
Q You have already testified about contacts with Ms. Kerner.
A That's correct.
Q Did you have any contact with anyone else involving this investigation?
A In the IG investigation?
Q Correct.
A No.
Q Do you know if any transcripts were transferred to the White House before July 23, 1994?
A I don't know.

87

Q Were any transcripts transferred -- delivered to anyone else outside the Office of General Counsel?

A Yes. The transcripts were made available to counsel for private counsel for Treasury witnesses who were -- Treasury witnesses who had chosen to retain counsel rather than be represented by Treasury counsel.

Q When were they provided with copies of transcripts?

A To the best of my recollection, it was the week of the -- the week following the 23rd. So it would have been like the 25th, sometime during that week.

Q Was that a mass distribution, or did they go out at different times?

A No. It was -- the arrangement was that counsel were informed that they could -- they could come and get copies.

Q Come pick them up?

A Come pick them up. They needed to make arrangements with somebody on the staff to do so.

88

And they would send a messenger over or something. I didn't handle any of the details of that. I just happen to know that was the arrangement. I did tell a few -- tell at least one private counsel that that was the arrangement.

Q Were copies of all the transcripts available to the counsel for the witnesses?

A I don't know.

Q Do you know if they were limited in how many transcripts they were allowed to look at or take with them?

A Not that I know of.

Q When I say how many, for the different witnesses' transcripts --

A They were permitted -- they were given copies of transcripts other than the -- other than their client's, yes.

Q Who coordinated that exchange?

A Well, the decisions as to -- as to do it at all, and if there were any restrictions, conditions, those decisions were made by the senior people on the team.

89

The actual coordination of it, the logistic coordination, was done by me and Mr. Rittling.

Q Were any restrictions put on these transcripts?

A I'm not aware of any.

MR. O'CALLAGHAN: I have no further questions at this time.

EXAMINATION

BY MR. SCHAUER:

Q Mr. Dougherty, it is not my intent to go over anything that is already covered, but I'm following up some things, and I may have to overlap a bit and try to be as brief as possible.

A Okay.

Q You testified earlier with regard to the summaries that you and others in the group prepared. In your conversations with anyone at the White House counsel's office, did you ever get a request from them that those summaries be sent over?

A Not that I recall.

Q Were you aware that they were aware that those summaries existed?

90

A Yes, I was aware that they knew those summaries existed.

Q Did you have an understanding of how it came about that they knew that they existed?

A No.

Q I want to show you a document. I have no belief that you have ever seen it, but I just wanted to show you everything we have with regard to -- not everything, but some things we have with regard to the preparation of those summaries and the White House's possession thereof.

This document is identified is as S007112 purporting --

MS. KAPLAN: I'm sorry, S007 --

MR. SCHAUER: 112.

BY MR. SCHAUER:

Q -- purporting to be to be a handwritten note from, I believe, Sharon Conaway although it is marked S to Jane, I believe that should be Jane Sherburne.

Take a look another that. Take as such time as you would like.

91

MR. O'CALLAGHAN: Counsel, for your assistance, I believe also that Bate stamp follows the fax cover sheet and the deposition summary that we referred to earlier involving Ms. Conaway.

MR. SCHAUER: Thanks.

BY MR. SCHAUER:

Q Have you seen that document?

A No, I have not.

Q Does that refresh your recollection as to any of the matters that you have testified to?

A No, it does not.

Q Does this come as any sort of surprise to you?

A Does what?

Q The existence of this memo?

A The content of the memo?

Q Right.

A Surprise is too much too strong of a term. It doesn't come as surprise, but it is not something that I was aware of before, or that I recall I'm aware of.

Q Thanks. Moving along, I want to focus in

92

on your role in reviewing the draft report. I believe you testified earlier that you reviewed the chronology. Is that correct?

A That's correct.

Q Did you review anything else?

A No.

Q Only the chronology?

A That's correct.

Q And in reviewing it, I believe you testified that you reviewed it for accuracy?

A That's correct.

Q Was there any other reason explained to you why you were to review the document?

A No, there wasn't.

Q Did anyone direct you that in the course of your review, you should slant the ultimate report in a particular way?

A No.

Q And when you say it was to review for accuracy, do you just mean cite checks and --

A That's correct. To review for -- I don't think I used the term accuracy earlier, but if I did,

93

what I meant was accurate authority. That is to say that what the chronology relied on -- what the chronology claimed to have relied on, it, in fact, relied on that information.

That was very much akin to cite checking.

Q Just to be clear, you weren't in any sense reviewing accuracy of the underlying sources?

A No, I was not.

MR. O'CALLAGHAN: Counsel, could you clarify that a little bit?

BY MR. SCHAUER:

Q My understanding of what you were doing was checking to make sure that the underlying sources of the chronology matched the chronology?

A That's correct. I did not examine the underlying sources for this accuracy.

MR. O'CALLAGHAN: Are you are referring to the transcripts?

MR. SCHAUER: The transcripts are --

THE WITNESS: I'm not sure what -- I don't recall what all the underlying sources were. There were at least transcripts. There may have also been

94

documents.

MR. O'CALLAGHAN: That was the clarification I was looking for.

MR. SCHAUER: Okay. I'm sorry.

BY MR. SCHAUER:

Q I show you a document which you testified about earlier. It is marked 6877, a letter from Stephan McHale to Jane Sherburne, which it has been noted Ms. Sherburne's is misspelled.

I want to just test the strength of your belief that the language in the second paragraph which says, As we discussed, would refer to a discussion that took place prior to July 23 of that day.

A Okay. Let me clarify what -- a couple -- as we discussed -- what I -- what I think that meant was not simply what Mr. McHale and Ms. Sherburne had discussed, but other discussions that had been held by people in the Department of Treasury prior to that day.

So I recall -- yes, I certainly recall that there were discussions regarding the use of the --

95

regarding being provided the transcripts -- being provided them and the use thereof prior to the 23rd.

There were discussions held within the Department of Treasury. I'm told that there were. I was not privy to any of them, but I'm told there were.

And that's the prior discussions that I'm referring to here.

Q I just want to clarify here. Your testimony is that you were told that there were prior discussions within the Treasury Department regarding this issue?

A That's correct.

Q Can you recall when you were told of these discussions?

A Generally, at the time the discussions were about to be held, and usually that was the case. I might be in a meeting working on a document production. Someone would have to leave to go to a meeting on something else and say, Would you continue to work on this, because we're going to be discussing something that you're not working on.

96

Q So do you have a specific recollection of a conversation in which you were told that people within Treasury were discussing the issue of transferring the transcripts from Treasury to the White House prior to July 23, 1994?

A I couldn't name a date or time or any of the individuals involved other than Mr. McHale. But I have -- I recall that prior to that date there were -- I was told that there were discussions about the transcripts and their use by private counsel and use by the White House.

Those discussions were sometime prior to that. I was told that there are -- were going to discuss this, this afternoon, or we just did discuss this.

Q Do you have any specific recollections of being told that the White House was requesting these transcripts prior to July 23rd?

A I don't have any specific recollection of that, no.

Q Do you have any general recollection?

A My general recollection is that prior to

97

the 23rd, there were discussions, because there are the records that -- you have the records -- you have in your possession, there are records that indicate that Mr. Cutler, in the interest of efficient resources, wanted to use the IG's resources for this purpose.

I also have a general recollection -- I also have a general recollection that counsel for -- privately retained counsel for Treasury witnesses wanted access to them and that there were discussions about that prior to the 23rd.

Q About access for --

A Access by private counsel.

Q -- for Treasury witnesses?

A For Treasury witnesses, right. There was a three-part -- my part was a three-part -- when the team was preparing Secretary Benson and, in fact, preparing everybody in the Treasury to testify on behalf of the department, there were certain individuals in the Treasury Department who chose to be represented by private counsel rather than Treasury Department counsel.

98

Mr. Cutler was representing all of the employees of the White House. So we had those three interests, the team, the private counsel, and Mr. Cutler, all were interested in some way or another in the transcripts.

Q As to the specifics of the discussions between people in the White House, the White House counsel's office, and people in the Treasury, do you have any knowledge of the discussions that went on between them regarding this issue or regarding the timing of this issue?

A No, I don't.

Q And just to clarify, when you said that you believed -- when you talked about "as we discussed," your reading of that "as we discussed" in this document 6877, is discussions that not only took place between Jane Sherburne and others in the White House counsel's office and the Treasury Department, but also conversations or discussions that took place between and amongst people within the Treasury Department?

A That's correct. That's my understanding of

what that means.
Q Thank you very much. You testified earlier that you didn't know if anyone within the team or within Treasury had spoke with RTC or discussed the RTC's concern about handing over information that the RTC considered to be RTC confidential information.
You testified that you didn't know of any such discussions. Do you know or have any reason to believe that such discussions didn't take place?
A I'm sorry. Would you rephrase that?
Q I guess the strength of your answer of not knowing is what I'm trying to test here.
A Of not knowing about --
Q Either discussions amongst the team about the RTC's concern or discussions with people at the RTC about the concern.
You testified that you didn't know that such discussions took place. Is that you didn't know one way or the other, or you don't think such discussions --
A Oh, I don't know one way or the other. The only thing that I do know is that -- and I have

testified to this -- that I knew early in the month, if not late in the month, it would be late in June, that the RTC had a strong, for lack of another term, proprietary interest in any information of theirs.
Not that -- I was not aware of anything that the RTC had identified as being confidential or non-public. I was only aware that the RTC considered any of their information to be their information and that they would make all decisions about it, not the Treasury Department.
Subsequently, as I also testified to, although I'll repeat it for clarification purposes, subsequently, I was told by someone else, and I don't hope who it was that the -- that all ultimately the information that RTC insisted on being redacted from the transcript -- that RTC officials redacted from the transcript consisted largely of the number 9.
MR. SCHAUER: I have nothing further.
EXAMINATION
BY MR. O'CALLAGHAN:
Q I just have a couple more. I won't keep you here too much longer. We were discussing earlier

101

about suggested edits and revisions that you and other people put together to -- with regard to the IG's draft report.

And you said you didn't know if those edits were given to the IG's office. Is that right?

A That's correct. I don't know what happened to them.

Q I would like to show you a document that is Bates stamped 01495, looks like an 8. Take a moment to review that. Let me know when have you had a chance to complete your review.

(Pause.)

BY MR. O'CALLAGHAN:

Q What I have just handed you an is a one-page document dated July 29, 1994. It is a memorandum for Kenneth R. Schmalzbach, spelled S-C-H-M-A-L-Z-B-A-C-H, from R. Peter Rittling, and the subject is review of the OIG's final chronology of White House contacts.

Have you ever seen this document before?

A I don't recall ever seeing it before.

Q Is Peter Rittling one of the people who

102

worked on suggesting edits to the draft chronology?

A As far as I know, Mr. Rittling did the same kind of thing that I just recently described a few minutes ago of checking authorities, in effect, "cite checking."

Q I'm just going to read you a section here that will says, The OIG incorporated many of our recommended changes in the final chronology. Some of the recommended changes were typographical errors, and some were substantive changes.

After hearing me read that and also reading it, does that refresh your recollection as to whether you ever knew the IGs were being given a -- copies of the suggested edits?

A No, it doesn't refresh my recollection.

Q As a matter of fact, you don't know whether or not they actually used any of the edits for the reports. Is that right?

A No. I have no independent knowledge of that.

Q Would you have been told of that, that that happened?

A Before -- I have no recollection of ever seeing it before this.
Q Independent of that document?
A Well, independent of my seeing that document today.
Q You discussed earlier the fact that counsel for Treasury witnesses were provided with copies of transcripts at a certain point, which you couldn't particularly identify.
Do you know whether counsel to Treasury witnesses actually received transcripts for witnesses other than the people they were representing?
A To the best of my recollection, they did receive a set of transcripts. I don't know whether it was a complete set.
Q Was a basic set put together for the counsels to the witnesses?
A That's correct.
Q And that's what was distributed?
A That's correct.
MR. O'CALLAGHAN: I have no further questions. Thank you.

(Thereupon, the deposition was concluded at 7:25 p.m.)

DAVID L. DOUGHERTY

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, FRANCES M. FREEMAN, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Frances M. Freeman

Notary Public in and for the
District of Columbia

My Commission Expires SEPTEMBER 30, 1996

DEPOSITION OF THOMAS McLARTY
IN RE: S. RES. 120

MONDAY, NOVEMBER 6, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of THOMAS McLARTY, called for examination pursuant to notice of deposition, at 9:31 a.m. in Room 534 of the Dirksen Senate Office Building, before CARMEN BUNCH, a Notary Public within and for the District of Columbia, when were present:

MICHAEL CHERTOFF, ESQ.
Majority Special Counsel
NEAL E. KRAVITZ, ESQ.
Minority Principal Deputy Special Counsel
GLENN F. IVEY, ESQ.
Minority Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

WILLIAM W. TAYLOR III, ESQ.
LESLIE M. BERGER, ESQ.
Zuckerman, Spaeder, Goldstein, Taylor & Kolker
1201 Connecticut Avenue, NW
Washington, DC 20036
On behalf of the Deponent.

CONTENTS

WITNESS	EXAMINATION
Thomas McLarty	
by Mr. Chertoff	5
by Mr. Kravitz	39
by Mr. Chertoff	44
by Mr. Kravitz	58
Errata	7246

EXHIBITS

Thomas McLarty DEPOSITION NUMBER	IDENTIFIED
Exhibits M1 through M3	47, 7248

PROCEEDINGS

Whereupon,

THOMAS MC LARTY

was called as a witness and, having first been duly sworn, was examined and testified as follows:

MR. CHERTOFF: Mr. McLarty, before we begin, I would like to just make some preliminary observations about the nature of these proceedings.

This deposition is being conducted pursuant to Senate Resolution 120, which established a Special Committee to conduct an investigation involving Whitewater Development Corporation and other related matters. You are testifying in this deposition in anticipation of public hearings. I can't tell you now whether you're going to be called at public hearings or not. What I can tell you is that the deposition will be held committee confidential until the hearings begin, at which point some or all of the deposition may become public. And in any event, in due course I think the deposition will, in its entirety, become part of the public record.

We're going to proceed by way of asking you

a series of questions which you are obliged to answer under oath. If you don't understand a question, please let me know and I'll rephrase it.

If you need a break either to consult with your attorney or for some other reason, let me know and we'll go off the record.

The stenographer is going to prepare a record of the questions and answers and before the hearing begins, you will receive an opportunity to review it in order to make corrections. I think realistically what that means is probably just about as soon as it's done, we will contact you and you will be able to come in and look at it and make corrections.

I should say to you, if you make corrections other than ministerial or clerical corrections, that in itself can be a basis to redepose you. If you are called to testify, you will receive a copy of the deposition four days in advance on the condition that you agree to restrict its use to yourself and your attorneys.

Now, I see you're represented by

5

Mr. Taylor. He obviously, or any of the counsel here, can make objections for the record. Please let us get this out and then you can go ahead and answer the question.

There are two circumstances under which you would be directed not to answer the question. One would be if your counsel told you that there was an issue of privilege and you are not to answer. The second would be if there was an objection based on the scope of the resolution. In either event, if such an objection is raised and an instruction is given to you, let us try to resolve it on the record. If we can't resolve it, then don't answer the question and we'll ultimately take it to the chairman, who's the final arbiter of objections.

EXAMINATION

BY MR. CHERTOFF:

Q Is there anything about the observations I've made to you that you would like to ask me something about?

A No, I believe they're clear.

Q I would like to direct your attention,

6

Mr. McLarty, to May of 1993. In that month, did you know an individual by the name of Erskine Bowles?

A I did.

Q When did you first meet Erskine Bowles?

A I met Erskine sometime in 1992 when he came to Little Rock on behalf of President Clinton.

Q And in what capacity was he in Little Rock?

A It was a meeting, and I can't recall whether it was before Governor Clinton was nominated or not, but Mr. Bowles was supportive of Bill Clinton's candidacy and came to Little Rock for a meeting about that candidacy for President.

Q Did he have a position in the campaign in 1992?

A I was not part of the campaign so I don't know the answer to that question. He was supportive of the President, but I don't think there was a formal role or title, but I'm not sure of that.

Q Do you know when he first met the President?

A No, I do not.

Q Do you know if he knew the President before

7

the campaign?
A It was my impression he did, but I don't know when they met.
Q Other than that encounter in Little Rock, did you have any other contact with Mr. Bowles in 1992?
A Yes, I did. He asked me to come to North Carolina to meet with a group of supporters and businesspeople, Mr. Bowles is from the business community, quite successful in that regard, and after we met in Little Rock at the meeting I noted, he asked me to come to North Carolina and I did and spent about a day with him.
Q Now, when did you first become aware that Mr. Bowles was being considered for a position in the Administration?
A Mr. Bowles expressed an interest in serving in the Administration, and I was aware of that sometime after the election. And he asked to participate in the economic conference which was to be held in Little Rock in December, and I was supportive of his involvement in that economic

8

conference.
Q Did he participate in that conference?
A He was a staff person, one of many staff people that did a lot of the work on the conference, staff work on the conference.
Q What was the next step that you were aware of in his becoming an appointee to the Administration?
A Mr. Bowles said he would like to be part of the Administration, would like to make a contribution. He certainly had a record of proven accomplishment and it seemed to be a point in his career when this was a fit in that regard, and ultimately he was named to Small Business Administration by the President.
Q Do you know how that particular post was selected for him?
A I don't recall exactly the process. Mr. Bowles did make his interest known. As I said, he had quite a proven record of accomplishment and distinction, so I certainly was receptive to his serving. It was my impression the President was,

too, and many other people.

There were a number of possible positions he could have -- was well qualified for, and this was one of them. I don't recall the exact process. As we began to fill out the Cabinet and other related appointments, Mr. Bowles was considered and ultimately named.

Q Did you have occasion to see him in Washington after he was nominated for the position of administrator of the SBA?

A Yes, I would see him in the regular course of business from time to time.

Q Well, I want to focus your attention on the period between his nomination and his confirmation, which I believe -- his confirmation, I believe, was on or about May 6, 1993. During that period of time when he was in Washington, did you have occasion to see him?

A I don't recall. I may have had occasion. I don't recall seeing him in that particular time period in a specific way. What I was referring to, once he was confirmed and was serving as SBA

administrator during the ordinary course of business, I would see him once or twice a month.

Q Do you have a copy or did you bring a copy of your diary with you?

A I believe we did.

MS. BERGER: We produced records. They were produced.

BY MR. CHERTOFF:

Q All right. I'll get it from them. I want to direct your attention again in the period, let's say April/May 1993, did you have occasion to have dinner with Mr. Bowles during that time?

A No, I don't believe I did.

Q Have you ever had dinner with Mr. Bowles?

A Sometime in February of '94 when this question was first raised, he and his wife attended a dinner party that my wife and I hosted at our home for several other couples.

Q Before that dinner party, you have no recollection of having dinner with him?

A No, I do not.

Q Did you have lunch with him during the,

11

let's say spring or summer of 1993?
A Mr. Chertoff, I can't honestly say whether Erskine and I had a meal together or not. I've already said once he was in his role as SBA administrator, I would see him during the ordinary course of business, and on occasion. I don't recall having a meal with him.
Q In --
A Other than the one I testified to earlier.
Q In February?
A Yes.
Q Keeping your attention focused in 1993, did you have occasion to have discussion with Mr. Bowles concerning Capital Management or David Hale?
A No, I did not.
Q Has he ever mentioned -- again, 1993, did he ever mention Capital Management or David Hale to you?
A Mr. Chertoff, I don't recall that he did, and I don't believe that he did.
Q Do you know John Spotila?
A No, I do not.

12

Q He was general counsel of the SBA. Does that ring a bell?
A No, sir, it -- I accept your description of his responsibility, but I don't believe I've ever met the gentleman you referred to.
Q In 1993, when is the first time you heard a mention of David Hale and/or Capital Management?
A I believe it was from public account, sometime later in 1993 at the time period you're referring to. I don't recall the specific time frame.
Q Would that have been in September 1993?
A Mr. Chertoff, I honestly don't remember the time frame. At some point, Mr. Hale's involvement in Capital Management became public record, and I believe that I learned of it on or about that time.
Q Do you remember if you learned about it in connection with stories that appeared in the paper in which Mr. Hale made certain allegations concerning Governor Tucker and President Clinton?
A Mr. Chertoff, I honestly don't remember the nature of the stories or the specific allegations

13

that were made in the story.
MR. CHERTOFF: One moment, off the record.
(Discussion off the record.)
BY MR. CHERTOFF:
Q Back on the record.
Directing your attention to the summer of 1993, did you have a conversation with William Kennedy of the White House counsel's office concerning allegations that had been made against President Clinton by David Hale?
A I don't recall visiting with Mr. Kennedy about that subject matter.
Q Did Mr. Kennedy ever tell you he had talked to David Hale about allegations -- withdraw the question.
Did Mr. Kennedy tell you that he had ever spoken to David Hale's attorney concerning David Hale and possible investigation of David Hale?
A No, I don't believe Mr. Kennedy ever conveyed that information to me.
Q Did Mr. Lindsey in 1993 have any conversation with you about David Hale or Capital

14

Management?
A I don't recall that he did. It's possible, Mr. Chertoff, that in the course of business when a specific news article hit or something, Mr. Lindsey might have mentioned that or I might have inquired about specific facts as Mr. Lindsey had been part of the campaign and had an institutional memory. I honestly don't recall that, but that could have occurred in the ordinary course of business.
Q Did Mr. Lindsey have responsibility in 1993 for handling matters relating to allegations about Whitewater or other allegations relating to things that had occurred in Arkansas during the '80s?
A Not direct responsibility. Those matters generally would have been handled, as I remember them, out of the White House counsel's office, but because Mr. Lindsey worked very closely with the counsel's office and is now formally part of the counsel's office, he is an attorney, as you know, by education and profession, the counsel's office may well have relied on him and involved him in any of these matters that you refer to. I don't know the

15

specifics there.
My recollection is that counsel's office dealt with these kind of matters and may well have asked Mr. Lindsey to participate but I don't know the level of detail there.
Q Do you know James Blair?
A I do know Mr. Blair.
Q How long have you known Mr. Blair?
A Probably close to 20 years.
Q Did you have occasion in 1993 to talk to Mr. Blair about either James McDougal or David Hale?
A I don't recall that I did.
Q Let me focus you more specifically, in the fall of 1993, did you either directly or indirectly have any communication with Mr. Blair concerning James McDougal and/or David Hale?
A Mr. Chertoff, I don't remember any discussions with Mr. Blair about Mr. Hale. I think at some point, but I'm not sure of the time period, I was aware that Mr. Blair had been asked to do some work on these overall matters regarding Whitewater and Madison. I was aware of that. And I think I saw

16

him on one occasion for, oh, a period of less than 10 minutes about that.
Q Did you see him in Arkansas or in Washington?
A I believe he was in Washington. I was not aware he was in fact here, and I happened to see him. That was the nature of the conversation.
Q Did this occur in 1993?
A I honestly do not remember the time frame.
Q Is there anything you remember about the circumstances of the meeting that would help us locate when in time it occurred?
A No, sir, I don't believe there are. I just recall what I have just testified to, that at some point, I believe it was in '93, but I'm not absolutely certain of that, I saw Mr. Blair and we exchanged a brief conversation and it was my impression he was working on some of these matters.
Q Did you see him in the White House?
A I believe he was in the White House.
Q Was he in the White House to see you or did you just happen to encounter him?

17

A I think I encountered him. He was not in the White House to see me.
Q Do you remember who he was there to see?
A No, I don't. It was my impression he was working with the White House counsel's office.
Q Where did you actually encounter him?
A I believe it was in the hallway in the White House.
Q Now, if I'm not mistaken, the White House counsel's office is on the second floor; correct?
A Actually the third floor, if you enter in the basement and first floor and second your way, or the third floor, yes.
Q And the White House counsel's office is directly above the office that you occupied when you were chief of staff; correct?
A That's correct.
Q Which hallway did you see Mr. Blair in? Was it the White House counsel's office hallway or the one that you were situated in?
A I think it was actually in the basement. I think I actually just saw him in the hallway of the

18

basement.
Q What do you recall of the conversation you had with Mr. Blair?
A I've really related about what I remember it. I had actually forgotten it until you phrased the question as you did. I wanted to respond forthrightly to it.
Q Well, again, just so if you can go through it again, you encountered him in the hallway. Were you surprised to see him?
A He had been to Washington on a number of occasions so I don't think I was surprised to see him. And we exchanged conversation. I think I asked him what he was working on or what he was doing here, and he said he was working on some various matters regarding Madison and Whitewater as I remember it, and that was about the extent of it. I don't know the time period, Mr. Chertoff, I can't pin that down.
Q Do you remember if it was when you were still chief of staff?
A I believe it was.
Q Did you have any conversation with anybody

19

after that in which they mentioned Mr. Blair's visit?
A I don't recall that I had any conversation and I don't remember his visit being mentioned to me.
Q Do you know an individual by the name of Sam Heuer?
MR. TAYLOR: Say again, please.
BY MR. CHERTOFF:
Q Sam Heuer, H-e-u-e-r.
A I don't believe I've ever met Mr. Heuer.
Q Do you know who he is?
A He's an attorney in Arkansas.
Q Do you know if he is an attorney for anybody in particular?
A He represented one of the parties involved in Whitewater and Madison, and I'm not sure which party, Mr. Chertoff, to be honest.
Q Now, did you have occasion -- let me direct your attention to October of 1993, early in October when Governor Tucker came for a visit up in Washington. Excuse me just one moment.
(Discussion off the record.)
BY MR. CHERTOFF:

20

Q Back on the record.
When did you first get to know Governor Tucker?
A I met Governor Tucker when he was a law student at the University of Arkansas, after he graduated from Harvard and I was an undergraduate student at the University of Arkansas. That was in the late '60s.
Q When you were in private business, did Governor Tucker ever represent your company?
A Didn't represent our family business in our ongoing activities. There was one acquisition that I was a partner in with several other partners, that Governor Tucker represented the consortium, as I remember.
Q Did you -- let me focus your attention back to October --
A Let me give a more complete answer, just for the record. Governor Tucker or Mr. Tucker had done work for Arklaw prior to my joining the company as president and we continued to use his services after that. He was one of many attorneys the company

used.
Q Were you or any company that you were affiliated with ever involved with Mr. Tucker in any business transactions other than his representation as a lawyer?
A No, it was just that one time he represented the group that made this one acquisition but no business transactions.
Q Directing your attention to early October 1993, were you aware of the fact that Governor Tucker visited with the President during that period?
A Yes, I was.
Q Do you know how that meeting came about?
A As I remember it, Governor Tucker requested the meeting. He was going to be in Washington, as I remember it, I believe for some other type of national meeting. I don't recall the specifics. And we put it on the schedule as we normally did when governors requested such a meeting, particularly when they were going to be in Washington -- when they were going to be in Washington, so this was a normal type of meeting schedule and we did so with Governor

Tucker.
Q Did Governor Tucker actually meet with the President?
A Yes, he did.
Q Were you there during the meeting?
A No, I was not.
Q Did you meet with Governor Tucker afterwards?
A No, I believe I met with him before. I had not recalled it until preparing for this deposition. And I think I met with Governor Tucker for five minutes or so. It was not on my schedule. As I recall it, either the President was running a bit late and Governor Tucker was waiting and I was -- I was asked to visit with him until the President became available or I, out of professional, personal courtesy, went to the lobby and requested Governor Tucker to come in for a five-minute visit, we exchanged pleasantries. And then I believe, as I remember it, I walked him to the Oval Office where he met with the President and Mr. Mason from intergovernmental affairs.

23

Q Other than exchanging pleasantries, did you have any particular discussion with him?
A Mr. Chertoff, I honestly had not remembered I had seen him. As I remember the conversation trying to recall it more specifically, it was a general exchange of pleasantries, and I believe Mr. Tucker had a couple of issues involving the state of Arkansas, which was again relatively normal for a governor to have. I don't recall what they were. I think one may have been the DFAS center, accounting center, a number of states were very desirous of that, including Arkansas.
Q When you met with Governor Tucker, was anybody else present?
A I believe there was someone else in the room from my staff, although I don't recall, and I think he had a staff member as I remember it, but I can't say with certainty.
Q Did Mr. Tucker, to your knowledge, meet with anybody else either before the meeting with the President or after the meeting with the President? When I say "anybody else," I mean from the White

24

House.
A I don't know. I don't believe that he did. He may have seen Ms. Rasco at some point in time because I think one of these issues, as I remember it, perhaps involved a welfare area, or subject in her area, but I don't know that, Mr. Chertoff.
Q Was Mr. Lindsey traveling with any -- or did he come to the White House with any assistant or any member of his staff?
MR. TAYLOR: Do you mean Lindsey?
BY MR. CHERTOFF:
Q I'm sorry, Mr. Lindsey -- I'm sorry, Mr. Tucker, Governor Tucker.
A Would you repeat the question?
Q Did Governor Tucker, when he came to the White House, appear with someone who was a member of his staff or an assistant of some kind?
A It seems to me that Governor Tucker had a staff member with him, but I honestly don't remember for certain, and I don't remember who it was.
Q At the time of Governor Tucker's visit,

25

were you aware of any newspaper stories or press stories concerning allegations involving Governor Tucker and possible misconduct in Arkansas involving Whitewater or Madison or Capital Management?

THE WITNESS: May we go off the record for a moment.

MR. CHERTOFF: Sure.

(Discussion off the record.)

THE WITNESS: Mr. Chertoff, no, I don't think I was aware of any articles or any matters.

BY MR. CHERTOFF:

Q Putting aside newspaper articles, were you aware of any information from any other source involving allegations about Mr. Tucker in connection with either Madison or Whitewater or Capital Management or Castle Water & Sewer?

A No, I was not.

Q Are you familiar with an entity or project called Castle Water & Sewer?

A I have become aware of it from public accounts. And the reason I hesitated earlier is all of this we've talked before, goes over such a period

26

of time, I find it at least difficult to identify when I read about a certain matter and how that comports with other timing. That's the reason I hesitated. I have become --

Q I understand it's difficult, but as best as you can, to focus yourself in 1993, as of 1993 had you heard of Castle Water & Sewer?

A I don't believe I had heard of Castle Water & Sewer until it was part of some of the public reports that I read in the newspaper, and I don't know what time period that was.

Q Well, now, in the fall of 1993, did Mr. Lindsey ever discuss with you or in your presence any efforts he was making to learn whether there were going to be indictments in connection with either Madison or Capital Management?

A No, he did not.

Q In 1993, were you aware that the White House counsel's office had obtained documents from the Small Business Administration regarding Capital Management?

A No, I was not aware of that.

27

Q Who is Larry Wallace?
A Larry Wallace is an attorney in Little Rock.
Q Is he a personal friend of yours?
A Larry is a friend, yes.
Q Have you had occasion to see him in Washington since you came to Washington on January 20, 1993?
A I probably have seen Larry a couple of times here in Washington.
Q Not to play hide the ball, I note from what you've produced in your calendar, there are some meetings with Larry Wallace, particularly I'm going to cite to you S 8396 for identification, and S 8397 for identification which indicate a meeting on April 21.
S 8398 for identification, which indicates a meeting of Friday, June 25.
S 8400, which shows a meeting of Thursday, August 19, 1993.
S 8402, which shows a meeting or dinner of December 10, 1993.

28

S 8403, which indicates some kind of a something, mention of Larry Wallace on your calendar of a date March -- it's kind of obscured here. It looks like it's the 10th or something. It's kind of cut off, but sometime in early March 1994.
Now, can you -- actually moving to the last couple of exhibits first, S 8403, can you indicate to us what that notation in your calendar denotes?
A No. As I remember it, Mr. Chertoff, Larry would call either me or my office from time to time on a number of occasions. I would not return the call, I would ask a staff member to do it just because of the press of time.
In this case, because I had tried to be professionally courteous and personally courteous and had known Larry, I returned this call and looks like I set up a time to call him where we made contact.
Q Putting that aside, looking at the other exhibits, can you tell us as best you recall what these meetings are about?
A Yes, to the best of my knowledge, this was with ConAgra, which was an agricultural concern based

29

in Nebraska, I believe, but has major interest in Arkansas and I think this was with their chairman that Mr. Wallace brought by in 1993. I don't recall this meeting.

Q When you say "this meeting," you're pointing to the meeting of June 25?

A Yes, June 25. It was to be held in Mr. Kneel's office, and I honestly don't remember that. It was a meeting, 1:30 to 1:50. This looks like just a stop by, had known Mr. Wallace's wife. It looks like they were in Washington and this looked like a five-minute hello visit when his wife was with him.

Q August 19?

A Yes. Then Friday, December 10 of '93, what I recall is Mr. Wallace and his wife hosted a Christmas party and I think my wife and I stopped by this particular party for, oh, 20 minutes or so to say hello. I think we had a number of other engagements that particular evening, and then I have already noted the last one here on March of '94.

Q Did you ever have discussion with

30

Mr. Wallace concerning anything to do with Madison?

A No, I did not.

Q Did you ever have discussion with him concerning a project called Campobello?

A No, I had not.

Q Do you know Jerry Jones?

A I do.

Q And how do you know him?

A Mr. Jones was a couple of classes ahead of me at the University of Arkansas.

Q Have you had contact with him since you came to Washington as a member of the Administration?

A On a couple of occasions.

Q And just generally what kind of contact, social or business?

A Primarily social. Mr. Jones called me, I believe, and invited me to the Redskins game and the Cowboys were playing here a couple of years ago, and then, of course, when the Cowboys won the Super Bowl he and Coach Johnson at that time were in the White House with some of the players from the Cowboys, which is traditional for the Super Bowl winner.

31

Those types of activities.
Q Have you had conversations with Mr. Jones concerning Madison Guaranty?
A No, I have not.
Q How did Erskine Bowles come to become Deputy White House Chief of Staff?
A Mr. Panetta and the President asked him to be Deputy Chief of Staff.
Q Were you involved in that process at all?
A Not directly. There had been some consideration of Erskine serving in the White House after what I think was generally regarded as a very successful and meaningful tenure at SBA, and I was -- had been a part of those discussions, and I certainly recommended him highly to the President for additional responsibility, if that seemed to work for all concerned, including the SBA.
Q In connection with your discussions with Mr. Bowles at any time, did he ever indicate to you that he either intended to or had recused himself from any matters involving David Hale and Capital Management?

32

A I don't recall any discussions about David Hale and Capital Management, and thus no discussions about Mr. Bowles recusing.
Q Do you know James Lyons?
A Yes, I do know James Lyons.
Q Have you had conversations with Mr. Lyons concerning Madison Guaranty or Capital Management or Whitewater?
A I don't recall that I have.
Q Have you seen him in the White House?
A From time to time I've seen Mr. Lyons in the White House.
Q Where?
A Generally it's been my impression he has worked with the counsel's office. I have just simply encountered him, again, generally in the halls. I don't recall any meetings with Mr. Lyons. I did not meet him until after I came to Washington, as I remember it.
Q In connection with the encounter he had with Mr. Blair at the White House about which you testified previously, was that encounter, was

Mr. Lyons in the White House at the same time that you encountered Mr. Blair?

A I don't recall that he was, Mr. Chertoff.

MR. CHERTOFF: I have nothing further.

MR. KRAVITZ: Do you have his calendar from May 5 and 6?

MR. CHERTOFF: I think what we've gotten are excerpts which I guess were produced to us as pertinent excerpts, none of which are May, I think.

MS. BERGER: Well, the May --

MR. CHERTOFF: We have April.

MS. BERGER: We produced over the weekend to you -- there have been several requests to Mr. McLarty. The most recent one was for any entry relating to Mr. Bowles that was on May 5 or May 6, 1993, and that was produced over the weekend, and there is an entry. Came from Jane Sherburne.

MR. CHERTOFF: There is an entry?

MS. BERGER: There is an entry on May 6.

MR. CHERTOFF: I don't have it with me. It may have just come over the weekend.

MR. TAYLOR: Why don't you get it while

we're here?

MR. CHERTOFF: Do you have a copy of it here? Great.

THE WITNESS: I'm not a glutton, but I would like to cover it while we're here.

MR. CHERTOFF: I agree.

MR. PIERSON: The record should reflect that Ms. Leslie Berger is also present for Mr. McLarty.

BY MR. CHERTOFF:

Q Back on the record.

Since we just received a copy of Exhibits S 12333 through S 12336, and let me just show you these and ask you if you can describe the documents from which these excerpts come.

A Mr. Chertoff, this document 333 reflects an entry from my DayTimer which I kept, kind of my personal notes and to-do list and so forth, as well as an informal schedule. And then document 334 is my more formal schedule or my printed schedule for that day of May 6.

Q Now, there's an entry on 12333 which is

35

visible. Is that your handwriting?
A It is.
Q And can you tell us what that indicates?
A It suggests, and it comports with the formal schedule, which lays out my full schedule. And you will see here on the formal schedule "note, Erskine Bowles and his family will be touring the West Wing and will be stopping in very briefly to say hello sometime around 8:45 to 9:00 a.m." And you note here, this is kind of a regular schedule and I've literally got it out to the left here, which means it's optional or you try to do it, but it's not a formal schedule, which comports with this. And it suggests that I had -- it had been suggested to me so see Erskine and his family. I think Mr. Bowles had requested that if possible and it suggests I wanted to do it and I believe I did it on this day, Mr. Chertoff.
I recall seeing Mr. Bowles and his family. I'm not certain it was this day. And what I remember is I saw he and his family in the Roosevelt Room, not in my office, and I spoke to them and exchanged

36

pleasantries with them and told them we were very pleased to have Erskine as part of the Administration.
Q Why would his name have been entered in your handwriting in your personal DayTimer?
A That's the way it worked. I kept all of my appointments here that would comport with my printed calendar, just for my own kind of internal order of when I was going to do something.
MR. PIERSON: The record should reflect that when he says "here," he's referring to his personal DayTimer, 12333, he pointed his finger at that document.
BY MR. CHERTOFF:
Q Now, Mr. McLarty, was it your practice to fill out your personal DayTimer using the printed schedule?
A Yes. The two would mirror each other essentially, not in every way, but it was kind of my personal note, it was my personal notation of appointments I had that day, and then my printed schedule was a more formal record of my schedule.

37

Q My question in this instance, though, is when you entered Erskine Bowles's name on 12333 which is your handwritten entry, did you copy that off of your schedule or does it indicate that you had information about Mr. Bowles's request from some other source?

A No, in this particular point on my DayTimer, and not to get into too much detail here, this would reflect my schedule, which means I usually copied it off of this, or in some cases if I knew something two or three days before I might make a notation on my DayTimer before my formal schedule is printed. My to-do list is on another page of my DayTimer.

Q Do you know how it is that you came to make the entry for Mr. Bowles's name there, whether it came off the schedule or from some advance word?

A No, it reflects that I was going to try and see Mr. Bowles and his family that day. That's what this notation means.

Q How did you learn that Mr. Bowles was going to come by and wanted to see you?

38

A I think he had made a request of my office that he would like me to see his family when they were in town, so it would have been on my list of requests. And I had agreed to do it, if at all possible, is what this suggests. And that's what my formal schedule reflects and that's what my DayTimer schedule reflects.

Q Now, there's a check mark next to E. Bowles. Does that indicate that in fact you had done --

A That's after the fact, I usually kind of go back and have a sense of accomplishment, check it off that you made that particular meeting.

Q So that whether or not the meeting -- the occasion in the Roosevelt Room is the same as the one that occurred on this date, the check mark indicates to you that you did, in fact, see Mr. Bowles on the 6th?

A Yes, yes. What I was saying is that -- yes, that's correct. I don't know whether that was occasioned by his announcement, his confirmation. I'm not sure what the occasion was in terms of

39

Mr. Bowles's family being here in Washington, but it reflects this entry. And the memory I have is seeing he and his family in the Roosevelt Room, and I think that's the same day.

MR. CHERTOFF: Nothing further.

MR. KRAVITZ: Could we take about two minutes?

(Recess.)

EXAMINATION

BY MR. KRAVITZ:

Q Back on the record.

Mr. McLarty, you've been asked some questions about documents that were produced over the weekend, Bates stamp numbered S 012333 through 012336. To your knowledge, have your attorneys produced to the White House counsel's office and through the White House counsel's office to the Committee all references to Erskine Bowles that appear in any of your calendars or DayTimers for the month of May 1993?

MS. BERGER: No.

BY MR. KRAVITZ:

40

Q No? For May 6, 1993?

A Yes. My attorney is certain I have instructed them and they have sought to fully comply with any requests that have been made by this Committee regarding this particular matter with Mr. Bowles and my DayTimers. I'm certain they have made a full effort to comply, as has my office staff.

Q But your understanding is that all references to Erskine Bowles that appeared on May 6 in any of -- May 6, 1993 in any of your calendars or DayTimers have been produced to the Committee?

A That's my understanding, yes.

Q Have you reviewed an unredacted version of your calendars and DayTimers for that day?

A For May 6, I have reviewed them.

Q Do dinners that you have ever appear in your DayTimer or your calendar?

A Yes, they do.

Q Does the absence of any indication in your DayTimer and your formal calendar for May 6, 1993 that you had dinner with Mr. Bowles have any significance in that regard?

41

A Yes, it suggests there was no formal request for a dinner, which would be either on my block calendar if it were accepted or -- which is the monthly calendar, or be on the formal daily calendar if I had accepted. And usually a dinner will be on the formal calendar just because of planning. If it is more spontaneous, almost always I will write in a note on my written DayTimer. Neither are there, which would suggest we did not have dinner that night. We did not have dinner that night.

Q Is there any doubt in your mind that you did not have dinner with Mr. Bowles that night?

A No, there's not. There's not.

Q I want to direct your attention actually to a different --, actually before I move on to another subject, did you have dinner with Erskine Bowles on May 5, 1993?

A No, I did not.

Q Is there any doubt in your mind about that?

A No. The only time I recall any dinner with Mr. Bowles was the social evening with he and his wife in February of 1994, and to the best of my

42

memory, I don't think I've had a meal with Mr. Bowles but it's possible we've had one, but not on May 5 or 6 for dinner.

Q I want briefly to direct your attention to a different subject in a different time period. In the spring of 1994, did you ask Mr. Cutler, who was then the White House counsel, to conduct an inquiry, internal inquiry regarding the subject of White House/Treasury contacts relating to Madison Guaranty?

A Yes, I did.

Q What were the circumstances under which you asked Mr. Cutler to conduct that internal inquiry?

A As I remember it, the contacts had become a matter of public record and some controversy. Mr. Cutler had joined the White House as White House counsel and I asked him to fully review this matter both for the facts and also any particular problems, criticisms, concerns that he might have as White House counsel, and he did so.

Q What were you contemplating would happen in the event that Mr. Cutler's review determined that any White House officials had acted inappropriately

43

or improperly?
A Well, in the review, I don't think Mr. Cutler or me tried to prejudge the review or the outcome, but I did want a thorough review, which Mr. Cutler concurred in, to ascertain the facts, and had that review suggested or if it suggested that there had been certainly illegal contact or improper conduct and certain discipline needed to be taken, then we would have taken that. Whether it was removal or other disciplinary measures, which we had done in the past.
Q So you contemplated the potential that personnel actions or other administrative actions might be taken as a result of Mr. Cutler's internal review?
A The possibility, but again not prejudging that. And I think perhaps even the public -- some of the press accounts contemplated that might be the case.
MR. KRAVITZ: Thank you. That's all I have.

EXAMINATION

44

BY MR. CHERTOFF:
Q Just a couple questions. Regarding the issue of records which were produced, do you know which dates in May your calendar was reviewed for any references to Erskine Bowles?
MR. PIERSON: Can we respond to that?
MR. CHERTOFF: Maybe that's easier, sure.
MR. PIERSON: Leslie, why don't you put on the record what our instructions were.
MS. BERGER: Okay. Our instructions were that we could review May 5 and May 6 for any entry related to Erskine Bowles, and the months of April and May for anything that was Erskine Bowles that was related to Capital Management or Hale.
So what you don't have is anything in May that has the Erskine Bowles name but is clearly not that subject, because we understood that there had been an agreement between Majority and Minority staff concerning those records and that those were not being called for.
MR. CHERTOFF: When you say "clearly not that subject," and Bill, if you want me to stop

45

questioning Leslie --
MR. PIERSON: That's all right.
MR. CHERTOFF: My question is how do you make a determination --
THE WITNESS: It was a notation, Michael, my calendar said NAFTA meeting, and then looking at the formal schedule, it had about 15 participants, including Erskine Bowles. I mean, clearly we were trying to get NAFTA passed on a bipartisan basis, and Erskine was part of that meeting, but it didn't in any way go to Capital Management or David Hale. That's, I think, an example of another notation.
Erskine was not on my calendar, my DayTimer. It was on my formal schedule with the manifest of who was going to be in the meeting. I think that's --
MS. BERGER: That's a good example, although that is not one that occurred in May, but that's an excellent example. But there are some entries that are just Erskine Bowles's name but we understood that wasn't what you were asking for, and there are some where it is clear what the subject is

46

and it is not Capital Management or David Hale.
THE WITNESS: Yes. And I think one of the -- just to complete this -- are we on or off?
MR. CHERTOFF: We're on.
MR. PIERSON: We're on.
THE WITNESS: I would give the same answer but I might give it in a bit more formal way. I think one of the other entries, Mr. Chertoff, was a matter regarding the SBA, not about Capital Management, David Hale, but I had been asked to follow up on by the President to get more information. And I had on my calendar, call Erskine about that, and that's what it denotes is to call him in a follow-up way. I have forgotten, I think it was about the loans processed or something of that nature.
MR. CHERTOFF: Off the record.
(Discussion off the record.)
MR. CHERTOFF: Back on.
MR. PIERSON: I'm going to hand to you, Mr. Chertoff, these do not have S numbers on them so I leave it to you how the record will be constructed,

47

and we would like to have copies back.
MS. BERGER: I have them.
MR. PIERSON: Well, we'll leave these with you, then. There's a page from a DayTimer dated May 7 with the name "Erskine Bowles" and a check mark and a page from a redacted schedule of Mr. McLarty for Friday, May 7. That refers to a 1:00 meeting with Erskine Bowles.
MR. CHERTOFF: All right. Let's mark these as Exhibits M1 and through M3, three pages.
(Exhibits M1 through M3 identified.)
BY MR. CHERTOFF:
Q For the record, what we'll do is take these as if they were produced and we'll circulate them through the way we would a normal production.
Showing you M1 -- well, M3 is a blank page, correct? It's a redacted portion of your schedule for May 7.
A Right.
Q M1 is your handwritten DayTimer, and Erskine Bowles is noted there on the right-hand side. What does that indicate to you?

48

A Mr. Chertoff, I don't remember this specific notation or date. It may have been about this particular matter regarding the SBA that I was following up on to get additional information, but I can't say that with certainty.
Q Let me show you M2, which is the formal calendar.
A Well, I'm sorry, I'm sorry. Let me rephrase this answer in light of looking at both the sheets together, if I may.
Q Okay.
A This reflects, as I tried to explain --
Q "This" being the handwritten?
A I'm sorry, yes, on M1, that comports with my formal schedule, a meeting with Mr. Bowles, which he may have requested because it has contact with his office to set the meeting up, but at any rate the notation on any formal schedule, which would indicate acceptance of a request that had been given to our office, is to meet with Mr. Gearan in the Deputy Chief of Staff's office. It has "Mark Middleton will also attend." It suggests we're going to discuss a

matter and I'm going -- then Mark Gearan will finish the meeting. And it comports with my personal keeping of my calendar on M1, same time, a 1:00 meeting. I don't recall the subject matter here.

Q The meeting occurred because there's a check mark on M1; correct?

A That would suggest it did. I don't recall the meeting but it would suggest that.

Q Who is Mark Middleton?

A Mark Middleton was my special assistant that worked in the White House on my staff.

Q Did he have a particular area of responsibility?

A He was a liaison with a number of Cabinet officers and other constituencies when I could not get back to someone, he would handle those kind of affairs as a staff member for me.

Q Do you have any recollection of what this meeting was about?

A No, sir, I do not.

Q Mr. Bowles asked for the meeting?

A I can't say that with certainty. This

calendar suggests that but I just can't confirm that.

Q Do you know whether in the course of the meeting, Mr. Bowles brought up the issue of any investigation of an entity or company in Arkansas?

A I certainly don't recall that he did.

Q Do you remember if he mentioned David Hale or Capital Management?

A No, sir, I don't believe that he did.

Q But you can't tell us what the meeting was about?

A No, I can't.

MR. PIERSON: Consult for a second.

(Discussion off the record.)

MR. PIERSON: I've called to Mr. McLarty's attention that this is either the day of or day after his confirmation.

BY MR. CHERTOFF:

Q Right. That was May 6.

A Which I had not been aware of or had not focused on. Mr. Chertoff, what this suggests, but I can't say with certainty, is to get Mr. Bowles and SBA moving in the right direction in terms of

51

coordinating with the White House, that Mr. Gearan would handle a lot of those day-to-day activities as Deputy Chief of Staff, that Mr. Middleton would be a liaison when I could not personally be in touch with Mr. Bowles, and that's what this appears, that we're getting started here, here is how we're going to try to organize and run things in a responsive, coordinated way. That's what it suggests.

Q Do you know whether in the meeting Mr. Bowles brought up -- let me withdraw the question.

It appears to you from the fact that the contact is someone in Mr. Bowles's office, that Mr. Bowles instigated the meeting?

A Well, that usually is the case, but in my formal calendar it is also noted who the contact person is so it doesn't confirm that. That usually suggests the case but not always.

Q And do you know whether in the course of this discussion Mr. Bowles brought up the issue of an investigation of a small business investment company in Arkansas?

52

A Mr. Chertoff, I don't --

MR. PIERSON: I think he answered that.

BY MR. CHERTOFF:

Q But since you refreshed your memory, I just want --

A I don't believe Mr. Bowles has ever brought this matter up to me, and I don't believe I've ever discussed this matter with Mr. Bowles at any time.

Q Let me just now go to the matter that Mr. Kravitz raised concerning the issue of the Inspector General investigation that occurred -- the issue statement was with respect to Mr. Cutler?

In 1994, I'm sorry. After you had asked Mr. Cutler to undertake this internal review, did he discuss with you, during the course of the summer, the manner in which he was going to undertake it?

A He may have kept me apprised. I don't recall a specific discussion.

Q Well, of what did he keep you apprised?

A Of the general matters of the review, but I don't recall his discussing how he would conduct this review. I don't think I remember getting into that

53

level of detail.
Q Did he interview you as someone who was a potential witness?
A I believe that he did.
Q Do you remember when he did that?
A No, I do not.
MR. PIERSON: When you say "he"?
MR. CHERTOFF: Mr. Cutler.
MR. PIERSON: Are you including his staff?
BY MR. CHERTOFF:
Q I'll be more clear. Did either Mr. Cutler or anybody acting at his direction from the White House counsel's office interview you in connection with his internal review?
A They did. I believe it was his staff, now that I refresh my memory.
Q Do you remember approximately when that was?
A No, I don't.
MR. PIERSON: If you look back at the transcripts of early depositions you've taken of Mr. McLarty, you're going to find the answer to that

54

question, it's right there.
MR. CHERTOFF: You're probably right. You're probably right.
BY MR. CHERTOFF:
Q During the course of that period of time that he was conducting interviews, did he have any discussions with you, Mr. Cutler, or did anyone on Mr. Cutler's staff have discussions with you about a parallel investigation being conducted by the inspectors general of Treasury and the RTC concerning White House/Treasury contacts?
A Mr. Chertoff, I don't remember his stating that. I don't remember his stating that.
Q Were you interviewed or deposed by anyone from Treasury or the RTC during the summer of 1994?
A No, I do not believe that I --
MR. PIERSON: Yes, you were.
THE WITNESS: I was informed this was not going to be the subject of this.
MR. CHERTOFF: Mr. Kravitz brought it up and that opened the door.
THE WITNESS: I understand that. So

55

without reviewing -- I've been interviewed a number of times, Mr. Chertoff, as you know, and I've given a number of depositions, so I think it's understandable why I might not remember.

MR. CHERTOFF: I understand.

MR. PIERSON: Those depositions relate to -- they give all the information to the questions you've just asked.

MR. CHERTOFF: I was going to use it as a predicate to get into a different question which I know wasn't covered with the earlier depositions.

MR. CHERTOFF: If you want to refresh your memory with counsel, please do so, I'm not going to try to force an answer out of you now.

THE WITNESS: I appreciate that.

MR. PIERSON: I think he needs to respond to the last question because the record is not clear about that. Let me consult.

MR. CHERTOFF: Take a moment and refresh yourself.

(Discussion off the record.)

MR. CHERTOFF: Back on the record. Do you

56

want to add something?

THE WITNESS: Let me ask one other thing.

(Discussion off the record.)

BY MR. CHERTOFF:

Q Do you have anything you want to add to your previous answer?

A Upon refreshing my memory, one of the depositions or interviews that I had given during the last several months was, I think, the Department of Treasury, the Inspector General there. It was not done at Treasury, and that perhaps was one reason I did not denote it was with Treasury.

Q Do you remember, and again if you want to refresh your memory, that's fine, because I understand you have not prepared for this, but do you remember receiving a copy of the transcript of that Treasury deposition after the fact to review and correct?

A I think we received a copy of the transcript, yes.

Q Did you furnish or did anybody at your direction furnish a copy of that transcript to the

White House?
A I would have done that through my counsel, Mr. Chertoff, and I don't know the answer to that, without conferring with counsel.
MR. PIERSON: Only recently in connection with document production, we did furnish it to you through White House counsel.
MR. CHERTOFF: I mean, I don't want shift the deposition to you, Bill, but maybe we can be quick if I ask whether in the summer of 1994 a copy of that Treasury deposition was furnished to the White House.
MR. PIERSON: I'm going to have to check. I just don't remember. I don't think so, but I --
BY MR. CHERTOFF:
Q And is it fair for me to conclude, Mr. McLarty, you don't really have a knowledge of whether there were any particular arrangements with your transcript after you reviewed it upon the conclusion of your Treasury IG deposition?
A Mr. Chertoff, that's right. Without reviewing with my attorney, if he's got to check it,

then it's clear I would not know without reviewing it either.
MR. CHERTOFF: All right. I have nothing further. Bill, if you get an answer to that, let me know.
MR. PIERSON: Sure.
EXAMINATION
BY MR. KRAVITZ:
Q I just have one more question. When you saw Mr. Bowles and his family on May 6, 1993, did you have any discussion with Mr. Bowles about David Hale or Capital Management Services or any small business investment company in Arkansas?
A No, I did not.
MR. KRAVITZ: Thanks.
(Whereupon, at 10:54 a.m., the deposition was concluded.)

THOMAS MC LARTY

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, CARMEN BUNCH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Notary Public in and for the
District of Columbia

My Commission Expires MARCH 14, 1998

DEPONENT Thomas F. McLarty, III

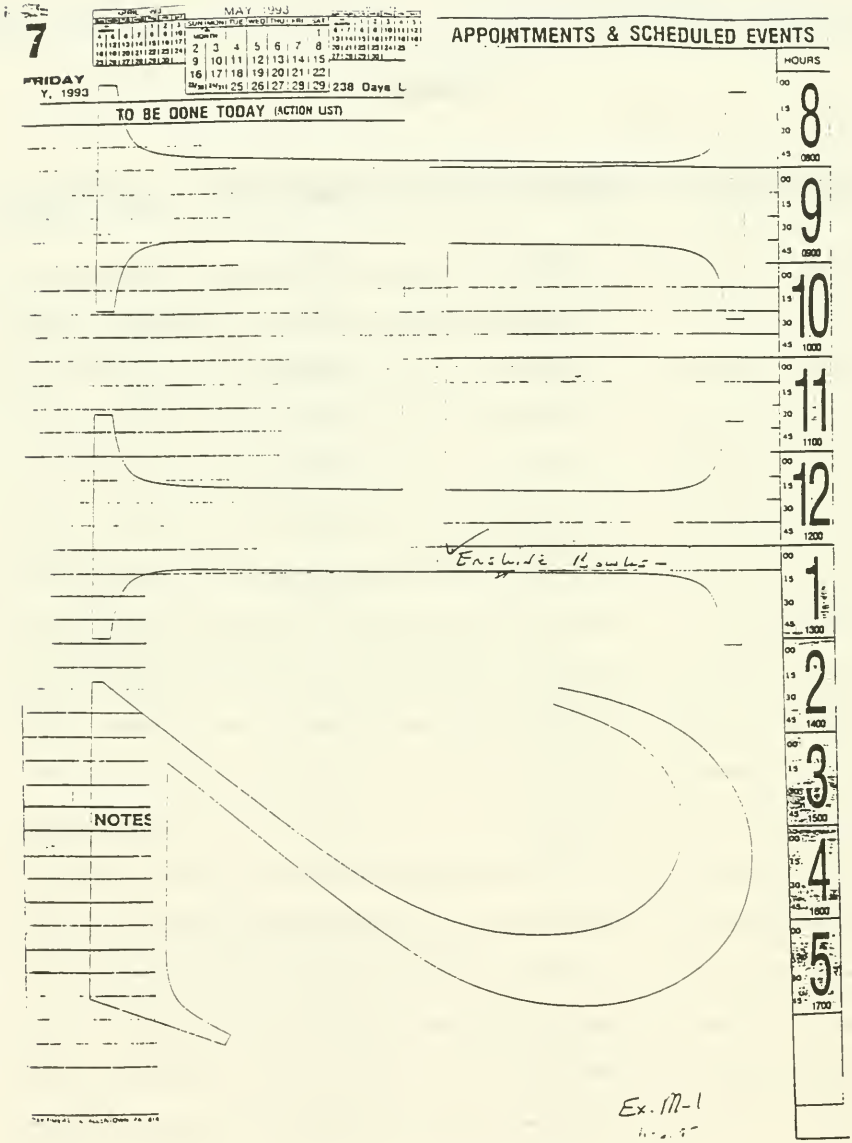
ERRATA

PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
28	11	the	every	
29	8	Kneel's	Neel's	
34	7	Pierson	Taylor	
36	10	Pierson	Taylor	
44	6	Pierson	Taylor	
44	8	Pierson	Taylor	
44	11	could	should	
45	2	Pierson	Taylor	
46	5	Pierson	Taylor	
46	20	Pierson	Taylor	
47	3	Pierson	Taylor	
50	12	Pierson	Taylor	
50	14	Pierson	Taylor	
52	2	Pierson	Taylor	
53	7	Pierson	Taylor	
53	9	Pierson	Taylor	
53	20	Pierson	Taylor	
54	17	Pierson	Taylor	

DEPONENT Thomas F. McLarty, III

ERRATA

PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
55	6	Pierson	Taylor	
55	16	Pierson	Taylor	
57	5	Pierson	Taylor	
57	13	Pierson	Taylor	
58	6	Pierson	Taylor	


7
MAY 1993
FRIDAY
Y, 1993
238 Days L
APPOINTMENTS & SCHEDULED EVENTS
HOURS
TO BE DONE TODAY (ACTION LIST)
NOTES
Ex. M-1

SCHEDULE OF MACK MCLARTY

FRIDAY, MAY 7, 1993
Draft (05/06/93 6:37 pm)

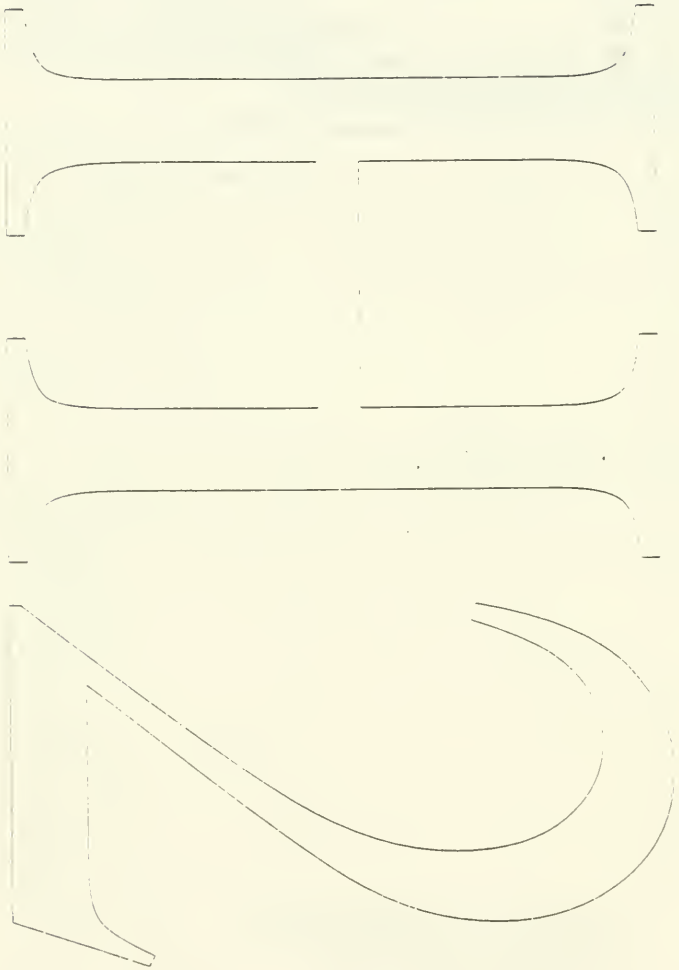
Craig Kirby: Pager 202/395-6661 #4145 Cellular 202/365-2756
COS Office 202/456-6797 (Marilyn Home 703/998-5635)
Karen Sudbay Pager 202/395-6661 #4232 Home 703/276-8212

1:00 pm
1:30 pm

MEETING WITH ERSKINE BOWLES
Location: COS Office/DCOS Office
Contact: Susan McNey 205-6702
NOTE: You should plan to spend 15 minutes, then bring him to Mark Gearan who will finish the meeting. Mark Middleton will also attend.

Exh. 111-2

FRIDAY, MAY 7 (continued)



5x 11.-3

DEPOSITION OF ROBERT PETER RITTLING IN RE: S. RES. 120

MONDAY, NOVEMBER 6, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of ROBERT PETER RITTLING, called for examination pursuant to notice of deposition, at 8:10 p.m. in Room 534 of the Dirksen Senate Office Building, before FRANCES M. FREEMAN, a Notary Public within and for the District of Columbia, when were present:

MICHAEL P. O'CALLAGHAN, ESQ.
Majority Associate Special Counsel
ANDREW M. SCHAUER, ESQ.
Minority Assistant Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

LENORE MINTZ KAPLAN, ESQ.
U.S. Department of the Treasury
Office of the General Counsel
1500 Pennsylvania Avenue, NW
Washington, DC 20220
On behalf of the Deponent.

41-381 97 – 22

CONTENTS

WITNESS	EXAMINATION
Robert Peter Rittling	
by Mr. O'Callaghan	3
by Mr. Schauer	81
by Mr. O'Callaghan	92
Errata	7300

PROCEEDINGS

Thereupon,

ROBERT PETER RITTLING

was called as a witness and, having been first duly sworn by the notary public, was examined and testified as follows:

EXAMINATION

BY MR. O'CALLAGHAN:

Q Good evening, Mr. Rittling. My name is Michael O'Callaghan. I am associate special counsel for the Majority on the Special Committee. This deposition is being conducted pursuant to Senate Resolution 120.

The Resolution establishes a special committee administered by the banking committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings and Loan Association, Capital Management Services Inc., the Arkansas Development Finance Authority and other related matters.

Section 1-B2E of Senate Resolution 120 authorizes investigation and public hearings into

whether the report issued by the Office of Government Ethics on July 31, 1994, or related transcripts of deposition testimony:

One, were improperly released to White House officials or others prior to their testimony before the Committee on Banking, Housing and Urban Affairs pursuant to Senate Resolution 229.

Or, two, were used to communicate to White House officials or to others confidential RTC information relating to Madison Guaranty Savings and Loan Association or Whitewater Development Corporation.

And that section of the resolution will be mainly the focus of this evening's deposition.

A Okay.

Q This deposition is in advance of public hearings which are scheduled to begin tomorrow, and there is a possibility that you may be asked to testify at the hearing. If that happens, we will notify your counsel.

Tonight, we're going to ask a series of questions. You're testifying under oath. You have

5

already been sworn.
If you don't understand a question, either let me or Minority counsel know. We'll rephrase it. If you need a break, let us know, and we'll also go for a break.
The stenographer is preparing a record of questions and answers. The deposition will be treated as committee confidential until the commencement of the hearings, and we ask that you keep the contents of the deposition confidential as well before the hearings.
Does counsel have anything to add to the record?
MS. KAPLAN: This is a continuing objection by the Department to the request of confidentiality. I will point out that Mr. Rittling has learned for the first time this past Friday morning, November 3, that he was even going to be deposed. And just in the course of his normal duties has been discussing the subject matter of these hearings with people as he performed his normal duties.

6

I just want that clear for the record, and we can deal with that in the normal course.
MR. O'CALLAGHAN: Thank you.
BY MR. O'CALLAGHAN:
Q Prior to the hearings, you may request your transcript, to come look at your transcript, and we will provide you with an errata sheet to make any corrections that you feel are necessary to make the transcript accurate.
And also, if you perform any substantive changes can also give rise to calling you in for another deposition, if that should happen.
You may be represented by counsel. Are you represented by counsel today?
A I'm sorry?
Q Are you represented by counsel this evening?
A I am.
MS. KAPLAN: I'm counsel for the Department of the Treasury, not Mr. Rittling's personal counsel. My name is Lenore Mintz Kaplan.
MR. O'CALLAGHAN: Objections to the form

7

of questions will be noted for the record. Counsel may object on grounds of privilege or irrelevance, and the committee chairman may rule on objections where the witness refuses to answer a question. Those are the preliminaries.

BY MR. O'CALLAGHAN:

Q Could you please state and spell your full name for the record.

A My name is Robert Peter Rittling, spelled R-I-T-T-L-I-N-G.

Q What is your present business address?

A 15th and Pennsylvania.

Q Where do you work?

A At the Department of the Treasury.

Q What is your position there?

A I'm an attorney in the general counsel's office.

Q Could you give me a description of your employment since you were graduated from law school?

A After graduating from law school, I took a

8

job with the firm of Littler, Mendelson, Fastiff & Tichy in San Francisco and worked there for approximately one year and then moved to Washington and took the job I have now with the Treasury Department.

Q So you're in the same position you were in --

A I have been in the same position at Treasury since I started.

Q When did you first start there?

A I think in 1992.

Q Who is your current supervisor?

A I work for Steve McHale and Ken Schmalzbach.

Q What are their positions?

A Mr. Schmalzbach is the assistant general counsel for general law and ethics, and Steve McHale is his deputy.

Q During the time period March through August of 1994, who were your supervisors?

A Mr. McHale and Mr. Schmalzbach.

Q The same?

9

A Yes.
Q Was the office where you work at, did that have a different name during that time period?
A It did. It was called the assistant general counsel's office for administrative and general law.
Q What are your responsibilities in your position?
A I'm a lawyer in the office, a staff attorney. You would have to be more specific.
Q I'll focus on March through August of '94. Were you assigned to certain projects during that time period?
A I was.
Q What were you working on?
A In addition to other responsibilities, I was working on the Whitewater matter.
Q What responsibilities did you have with relation to that?
A Assisting in document production and in discovery, responding to different requests from different entities that were investigating the

10

matter.
Q When you say Whitewater, does that include inquiries into the propriety of the Treasury/White House contacts --
A It does.
Q -- in connection with that? Did you ever become aware that the Treasury inspector general's office and the Resolution Trust Corporation inspector general's office were conducting investigations into the White House/Treasury contacts?
A Yes. I know about that.
Q When did you become aware of that?
A I can guess, say, during the time period that you mentioned, sometime after March or during March, 1994, perhaps.
Q At that time, were you aware that there were -- the intent was to conduct an investigation in order to enable the Office of Government Ethics to render an ethics opinion to Secretary Benson?
A Right. That's correct. That was my understanding.
Q Did you have any involvement with any of

11

the planning or the execution of the Treasury IG and the RTC IG investigation?
A No, I did not.
Q Did you have a role making contributions to any of the work product that was a result of that investigation?
A You would have to be more specific.
Q Did you contribute to any documents that were produced by the joint investigation?
A Documents produced by the investigation?
Q (Nods)
A What documents do you mean?
Q I'm just asking any documents at all.
A That the investigation produced?
Q Correct. That were created, produced during the course of investigation or as a by-product or end product of the investigation.
A You have to be more specific.
Q You don't understand the question?
A It is just too broad. I'm sure in some way I might have contributed to what the -- what resulted from the investigation.

12

Q Well, I'll take a step back. Specifically, with -- in relation to document production and discovery that you were doing, in connection with different inquiries into the White House Treasury contacts, were you also acting in a capacity to help prepare the Secretary for testimony before Congress?
A Yes. I did work on things to help the Secretary prepare for his hearing before Congress, yes.
Q What type of assistance did you provide?
A I recall drafting some questions and answers for the Secretary. I recall working on a briefing book for the Secretary -- or let me clarify, on items that were included in the briefing book.
Q What specifically were you working on that was included in the briefing book?
A I think it was a -- summaries of what some of the other witnesses might testify to.
Q How were those prepared?
A They were prepared by reading through the deposition transcripts of the witnesses.
Q What was the origin of the deposition

13

transcripts? Where did they come from?
A They came from the office of the inspector general.
Q How did you come to have access to transcripts to the deposition that were taken by the office of the inspector general?
A I believe I -- I wasn't involved in the receiving of the transcripts, but I believe they were forwarded to our office from the inspector general's office.
Q Did your office request to receive copies of these transcripts?
A I don't know if we requested them, but we did receive copies, I suppose, because I had copies.
Q But you don't specifically know if it was a request made for the transcript?
A I don't.
Q Did anyone ever tell you there was?
A Not that I recall.
Q Do you know who delivered or transferred the transcripts to your office?
A I don't know that.

14

Q Have you ever learned?
A No.
Q Who received the transcripts initially?
A I don't know.
Q Who provided you with copies of the transcripts?
A I don't recall.
Q Were you specifically provided your own copies, or did you work off a set that was used by a number of people?
A I think I had access to a set of transcripts.
Q Where were those located?
A They could have been in my office or in a file cabinet outside of my office.
Q Were you in a suite of offices at that time?
A I was.
Q Who else was in the suite?
A Henry Booth.
Q Is he an attorney?
A Yes, he is. David Dougherty, an attorney

15

also. William Murphy, an attorney, Lizelle -- yes, Lizelle Mosquera. She is a secretary. One more person, Mary Grace Tillotsoy. She is an ethics specialist.

Q Are these people all employees of the office of general counsel of the Treasury?

A Yes, they are.

Q And do they all report to Mr. McHale and Schmalzbach?

A They do.

Q And did they at the time?

A Yes, they did.

Q When did you first receive copies of the transcripts or review them?

A I believe it happened in the month of July, 1994, but I can't recall the exact date.

Q Do you recall whether it was in or around the time that the Secretary was sent a copy of the Treasury IG draft report?

A I believe it is around that time.

Q Do you know if it was before that?

A I think it was before that.

16

Q Did you have the transcripts before the draft report was given to the department?

A I believe that's true.

Q How far in advance?

A Well, if we did, in fact, receive the transcripts before the draft, you said inspector general's report. Right?

Q (Nods)

A I don't know, perhaps a couple days, maybe a week.

Q Did you perform any sort of review the transcripts before the receipt of the draft report?

A Yes, we did.

Q What type of review did you conduct?

A We read through all the transcripts, and we made transcript summaries.

Q Who participated in that process?

A I worked on it. David Dougherty worked on it. Beth Jones, an attorney in the general counsel's office, worked on it. And one other attorney, his first name is Kenneth. And I can't recall his last name. He has left since then.

17

Q He has left the Department?
A Yes, he has.
Q Who did Beth Jones report to at the time? Who was her boss?
A Mr. Bauman.
Q Is that John Bauman?
A Yes, it is.
Q Who is his immediate supervisor? Who was it?
A John Bauman is Ken Schmalzbach's equivalent. So he would report to, ultimately, the general counsel.
Q During this time period, Mr. Schmalzbach reported to the general counsel?
A Ultimately, yes.
Q How about immediately?
A I guess it would be the general counsel or the deputy general counsel.
Q What are their names?
A At the time?
Q Correct.
A The deputy was Dennis Foreman, and the

18

general counsel was Jean Hanson.
Q Now, you said these summaries were included in a briefing book that was provided to the Secretary. Is that right?
A Well, no. That's not correct.
Q What were they used for?
A The summaries were used for reviewing the draft OIG report.
Q Was it your understanding when you began the summaries that that's the purpose they were going to be put to?
A I don't recall.
Q When they told you, Here are the transcripts, just do the summaries, do you recall what -- did they tell you what they were going to use them for? Do a good job because need it for this?
A Of course we were asked to do it and to do a good job. We always do. But, no, I can't recall exactly if I was told what the purpose was.
Q Were you anticipating you were going to get a copy of the draft report, though?
A I don't recall that. I don't know. I

19

can't recall whether I knew about it beforehand or not.
Q And I apologize if I misspoke earlier, but did you make a reference to the summaries being included in the briefing book? If you could explain.
A There were some, perhaps, summaries of the summaries. We condensed -- for the briefing book, we made summaries that were perhaps one or two paragraphs long. And they were basically a narrative that was the summary of what each witness might testify to based on the summaries, the more extensive summaries that were based on the transcripts.
Q Were the summaries used for any other purpose? I'm talking about the initial summaries.
A Right. The long ones. I think just -- no, I don't think so. I mean, just general information about the testimony.
Q Were they provided to anybody outside the office of general counsel?
A Summaries?
Q Correct.
A I believe the summaries were provided to

20

other people.
Q Who were they provided to?
A To the best of my knowledge, they were provided to Department witnesses or their counsel.
Q When did that occur?
A I think at the end of July, perhaps.
Q When the witness counsel were provided copies of the summaries, were they provided with any other documents?
A I think they were provided with the copies of the transcripts.
Q I'm talking again about the first summaries, longer summaries. Were they provided to anyone else?
A I can't recall exactly.
Q Do you have a recollection as to whether they were given out to anyone at all?
A Perhaps they were, but I can't say for sure.
Q Is there a specific reason for your hesitation?
A Only that I can't recall exactly. It was

21

over a year ago.
Q Have you ever learned that they -- were copies of the deposition summaries were provided to the White House?
A Again, I can't say for sure that I knew that. I just can't recall exactly. It is possible, but I say unequivocally that is true.
Q Do you have a sense that might have happened? You said you can't say unequivocally. I'm just trying to see if you have any idea that that might have happened, if you have any reason to believe it could have happened.
A It might have happened.
Q Do you have any basis for believing that it did happen?
A What do you mean?
Q What I'm trying to do is, I understand that your recollection is not absolutely clear. And I'm just trying to determine whether there is any part of your recollection that tells you that summaries were transferred to the White House?
A I have -- I might have prepared a package

22

of documents for the White House. They might have included the summaries, but I can't say for certain that that is the case.
Q Who was the package prepared for?
A The White House.
Q No one in particular there?
A Perhaps I think it was counsel's office, perhaps Lloyd Cutler or one of his assisting attorneys.
Q When did this occur?
A I suppose at the end of July, 1994.
Q Do you have a more specific recollection as to what day in July you prepared the package of documents to the White House?
A I think perhaps it was a Saturday.
Q Was it Saturday, July 23rd?
A That's possible.
Q Was the package of documents that you prepared ever delivered to the White House?
A I can't say that I have personal knowledge that it was, but I have heard that it was.
Q What did you hear?

23

A That it went to the White House.
Q Who did you hear that from?
A I think it has been in the press.
Q For the edification of our readers --
A Someone in my office, perhaps my supervisor, but I can't say --
Q When were you asked to put the package together?
A Well, I believe -- if that was the right date, I was asked that morning to put the package together.
Q Who asked you to put it together?
A I believe it was Mr. McHale.
Q I will show you something that might refresh your recollection. I would like to show you a document Bates stamped 6877.
A Okay.
Q It is a letter dated July 23, 1994 to Jane Sherburne from Stephan J. McHale.
A Okay.
Q Have you seen this document before?
A I have.

24

Q When did you first see this?
A I don't recall.
Q Did you see it in around July 23?
A I don't recall that.
Q Do you recall this being attached or part of the document package you put together?
A I'm sorry. I don't recall.
Q How did this first come to your attention, this document?
A This letter?
Q Correct.
A I remember seeing it from the Treasury production.
Q But previous to that, had you seen it?
A I can't say for sure.
Q Does this -- looking at this document, does this help refresh your recollection as to when you prepared the package of documents for the White House?
A Certainly. If this is July 23, you say it was a Saturday, that would probably be the day that I prepared it.

25

Q July 23 was a Saturday, 1994. So you said Mr. McHale asked you that morning to put together a package of documents. What were his specific instructions to you that morning?

A He asked me to prepare a set of transcripts for the White House, and I believe I might have also included transcript summaries. I put the package together in a box.

Q And where did you get the transcript from which you made the copies?

A Well, we had transcripts. We had copies of all the transcripts or all but one, I guess. We had copies made at the print shop at Treasury, and those copies we put in a package for transmittal to the White House.

Q Did you use the print shop at Treasury that morning or had it been done earlier?

A I suppose it had been done the night before.

Q Was it done the night before in anticipation of putting this package together?

A I'm sorry. I don't know. Let me -- it

26

also might be the case that we had several copies of the transcripts, and we just took one copy and -- and took one copy and made up the package. I just can't recall exactly when we had copies made.

Q Do you recall whether you pulled copies out of a file cabinet or whether you did go to the print shop that day? You were asked to put the package together. Do you remember how you did it?

A I guess I remember having a box of copies, and I -- from that -- on a cart that came from the print shop. I can't recall when it came from the print shop. But I remember pulling one copy of all the transcripts from the copies and putting them in a box for the White House.

Q You say you might have put summaries, but you don't have a specific recollection?

A It is very possible, but I don't -- I can't say for sure that I did.

Q Have you since -- you can't say for sure today whether you did. Is that right?

A That's right.

Q After you put the box of documents

27

together -- you put all the documents in the box and prepared the package, where did you -- where did you actually assemble the documents?

A I assembled the package just outside my office, my office suite.

Q Did anyone assist you?

A No.

Q What time did you arrive at the office that day?

A Perhaps around nine o'clock in the morning.

Q How soon after were you asked to prepare the package after you arrived?

A It was early morning, perhaps 9:00 or 10:00.

Q Fairly soon after you arrived?

A That's right.

Q Was Mr. McHale already at the office when you arrived?

A I don't know.

Q Do you remember if when you came in, you walked in his office to see what the drill was for the day or --

28

A That's possible. I do recall that he was there early. I don't know if I was there first or he was there first.

Q After you assembled the documents outside of your office, what did you do with the box and package of documents?

A It sat there for most of the morning. And I don't know what happened to it after that.

Q Did Mr. McHale tell you specifically why you were putting the package together?

A To go to the White House.

Q Did you ever learn at whose request the documents were being sent over to the White House?

A I don't think so. I don't think I know that.

Q Do you know who at Treasury instructed that the package be put together?

A I do not.

Q Other than Mr. McHale instructing you?

A I don't know that.

Q Do you know who at the White House requested the documents, if anyone?

29

A Well, based on this letter --
Q Independent of the letter.
A I just can't recall that.
Q Were you ever told?
A I think I eventually found out that, maybe that day or sometime after that, that Mr. Cutler was going to use the transcripts to prepare for the hearings. And I think also so he could conduct his own investigation of the White House/Treasury contacts.
Q Who told you that?
A I don't recall. But I think that was common knowledge. Perhaps it was in the press. I don't know.
Q Do you know when the documents were removed from outside your office?
A I don't know that, no.
Q Were you told who was -- whether someone was supposed to bring them over to the White House that day?
A I recall waiting for something to happen, like a call from the White House that they were ready

30

to receive them, but I don't recall anything other than that. I don't know what happened to them.
Q Were you waiting with anyone for the call or --
A No, I wasn't. After I put the package together, I went on to something else.
Q Your work was done?
A I was finished with it, as far as I knew.
Q Were you ever told that you might have to deliver the documents?
A I might have been, but I can't recall exactly.
Q Have you ever learned who -- have you ever learned somebody brought the documents over to the White House?
A Yes. I have heard that they were delivered to the White House.
Q And do you know who delivered the transcripts to the White House?
A I have heard that perhaps it was David Dougherty, but I can't say for sure.
Q Where did you hear that?

31

A I don't know.
Q Did you hear it around the office or in the press?
A Around the office, perhaps. I might have heard it from David himself, but I just can't recall.
Q Was he in the office that day?
A I think he was.
Q Did you have any conversations with him that day?
A I'm sure we did if he was in the office.
Q Are you and David friends?
A We are friends, yes.
Q Would he have normally told you if he was going over to the White House to drop off some documents, some transcripts?
A Perhaps. But again, at that time we were both very busy. Hours and hours could have passed, and we had not communicated. So it is something he could have done, and I would not know about it.
Q Was anyone in the Treasury IG's office consulted before the transcripts were delivered to the White House?

32

A I don't have personal knowledge of that.
Q What knowledge do you have?
A Well, I have learned that I think that aspect was -- there was some negotiation over that.
Q How did you learn that?
A I think it has been in the press. It has developed into quite an issue, as you know.
Q Have you had any specific discussions with anyone at work, anyone from the Treasury or the White House or the Treasury IG's office?
A I believe at some time after that I did speak with someone in the IG's office about it.
Q Who did you speak to?
A I think I spoke with Francine Kerner.
Q What did you talk about?
A That it had become an issue.
Q When did this conversation occur?
A I can't recall exactly, but now that you mention -- I think it was something that was raised at the hearing itself, the fact that transcripts were sent to the White House.
I believe, I think it's in the Senate

33

hearings, perhaps Senator Bond, but I can't say for sure, raised it as an issue. And I recall then, perhaps -- I think I was watching the hearings, and someone else mentioned it, commented on the fact that it was an issue.

And I believe sometime after that I might have heard something from Francine Kerner.

Q Did she contact you or did you contact --

A I think I ran into her in the hallway, and she mentioned it, perhaps.

Q What did she say?

A That it was an issue.

Q Did she discuss with you any conversations she might have had with anyone?

A No, she did not.

Q Has she ever? When I say the conversations, I should be a little bit more specific, any conversation with regard to handling of the transcripts.

A I don't recall if she did.

Q Do you know whether she provided transcripts to the Office of General Counsel on July

34

18th?

A Again, I know we received transcripts, but I can't say who we received them from or the exact date that we received them.

Q Do you have a fresh recollection if I asked you whether Francine Kerner delivered the transcripts or transferred the transcripts to the general counsel's office?

A Not really, I just can't recall.

Q Do you know if the transcripts were ever delivered to someone in the Office of General Counsel at one time and then requested to be returned, and then transcripts were redelivered to the Office of General Counsel?

A I don't recall that, no.

Q Have you ever heard that?

A Say that again. They were delivered to the Office of General Counsel, taken back and then redelivered?

Q Correct.

A I can't say I recall that at this time.

Q Have you ever been told that?

35

A I don't think so.
Q Have you ever heard that Mr. Dougherty delivered or had cause to have transcripts summaries transferred to the White House counsel's office?
A Mr. Dougherty had caused transcript summaries to be delivered to the White House?
Q Right. Have you heard that or do you know about that?
A Just what I said earlier. That's possible I -- in preparing the package of transcripts for the White House, I also included transcript summaries. That's very possible.
And I have heard that Mr. Dougherty was the person who took the package to the White House.
Q Independent of that package being delivered, whether on another occasion he caused transcripts to be -- transcript summaries to be delivered to the White House?
A I can't say I recall exactly, but now that you mention it, it sounds familiar, but I don't why.
Q Did you ever hear that he had sent transcripts summaries to Sharon Conaway?

36

A She works in the White House -- I --
Q Just wondering if the name helps ring a bell for you.
A No, not regarding David Dougherty. I know who she is. I believe I have spoken with her.
Q I would like to show you a -- did you ever hear that a transcript summary of a Steve Katsanos was sent to the White House counsel's office?
A Did I ever hear that?
Q Hear or learn.
A That's a difficult question. I can't say.
Q Let me help you out. I understand what you're saying. Other than any summaries which may have been included in the package of documents that you put together for the White House on the 23rd, do you have any knowledge of a deposition summary of Steve Katsanos being transferred or delivered to the White House counsel's office?
A Other than that one time, you said?
Q Other than the possibility on the 23rd. Correct.
A At some other time other than the 23rd?

37

Q Correct.
A Specifically, a Steve Katsanos summary?
Q Specifically.
A No, I don't recall that.
Q Do you have knowledge of any other transfers of summaries other than on the 23rd that went to the White House?
A No, I don't.
Q Do you know or have you ever learned whether Sharon Conaway in the White House counsel's office sent a deposition summary of Steve Katsanos to counsel of any of the White House Treasury RTC witnesses?
A No, I wouldn't know about that. I don't recall that.
Q At the time transcripts were -- on July 23, in or around July 23, at the time they were delivered to the White House, was anyone at the RTC IG's office consulted before the transcripts were delivered to the White House?
A I could speculate and say I'm sure that was the case, but I can't say for sure. I was not

38

involved in the negotiation over the transmitting the transcripts to go out.
Q So you have no knowledge?
A That's right.
Q Of that at least. I didn't mean to infer --
A In everything.
MS. KAPLAN: To the extent that your comment was directed to Mr. Rittling saying he doesn't have knowledge, in fairness to him, you're asking about a lot of things.
MR. O'CALLAGHAN: I'm just --
MS. KAPLAN: And specific recollections are very difficult.
MR. O'CALLAGHAN: I understand, but that's why we're asking questions.
MS. KAPLAN: That's why you're asking, I understand, and that's perfectly clear. But to the extent that your comment that he doesn't have a recollection, that's fair on his part, too, that he might not have one.
MR. O'CALLAGHAN: Sure. Part of the human

39

condition.
MS. KAPLAN: That's right. As long as you understand that.
BY MR. O'CALLAGHAN:
Q At the time the transcripts were delivered to the White House in and around July 23, at that time were you aware of whether there was any confidential RTC information contained in the transcripts with regard to criminal referrals?
A I know that has become an issue.
Q But at the time?
A Well, I believe that I did. I was sensitive to that, because -- let me go back and clarify something.
Q Certainly.
A In sending things to the White House and to other people, like the transcripts or transcript summaries, I have to say that I'm not sure that every transcript or every summary was sent out.
It is possible that we retained a summary or a transcript, because it did contain sensitive information.

40

Q Were you -- do you remember, were you asked to do that on the 23rd when you put the package together?
A I believe it was mentioned to me.
Q By Mr. McHale or somebody else?
A Mr. McHale or Mr. Schmalzbach or both.
Q So they both talked to you about putting together the documents, the transcripts and perhaps the summaries?
A Okay. They must have, yes, both of them.
Q Just to take another step back, did they talk to you at the same time, or were they different conversations?
A I think both, separately and then, perhaps, together.
Q And they both gave you instructions with regard to putting together the packet of documents that were going to go to the White House, if you can recall whether you were in their office or your office?
A I may be confusing the day that we sent the transcripts to the White House with the day that we

41

sent some transcripts and summaries to the witnesses.
I think that occurred on two different Saturdays. So I may be confusing the two.
Q Maybe we can hopefully clear up a little confusion.
On the 23rd, do you recall whether there was a specific hesitancy to provide the White House with documents that might contain confidential information, or did that become an issue later on?
A I think it became an issue later on. I'm not sure that I knew there was a problem on that Saturday with the White House.
Q That there was concern about it?
A Right.
Q To just be clear, do you recall whether you talked to Mr. Schmalzbach as well on the 23rd before the White House documents were sent over?
A I think it was perhaps just with Mr. McHale that I spoke.
Q When did you get the -- when did the go-ahead come in to have the transcripts delivered?
A To the White House?

42

Q Yes.
A I don't know, because I wasn't involved in delivering the transcripts.
Q Were you in the office -- rather, how long were you in the office for that day?
A About from nine o'clock in the morning to ten or eleven o'clock at night.
Q So you were there all day and most of the night?
A Yes.
Q You don't have specific recollection when the go-ahead came in to deliver the transcripts?
A I really wasn't involved. I was busy with something else.
Q If you could just answer the question.
A Could you restate the question?
Q Sure. The question was whether you became aware when the go-ahead came to deliver the transcripts.
A I was not aware of that.
Q Have you since learned when it came in?
A No.

43

Q So just -- I asked you earlier whether you were aware that there was confidential RTC information with regard to criminal referrals contained in the transcripts on the 23rd.

What is your recollection of that? We went back and forth because you said --

A Right. I don't recall having a concern about sensitive information being contained in the transcripts on the 23rd.

Q I'm going to show you a document which begins on Bates stamp 015244. It is actually a series of documents, 015335, but I believe it was all produced together and appears to go together.

Can you take a look?

A Do you know where it came from?

Q I believe it was produced by Treasury.

A Right. But do you know whose office it came from?

Q I don't have that with me right now.

A Okay. What do you want?

Q Take a look at it. I'm just going to ask you a general question. Have you seen it before? Do

44

you know what it is? What does it represent? What is contained inside it? I'm not going to ask you about the specific text.

A Is it all the same then?

Q Take your time in looking through it.

A Okay.

Q After having a chance to review the document I just showed to you, which contains a cover page on it as well, just for identification purposes, it reads Print File List 7-28-94, 12:10 p.m.

It says file list, and then the file name includes C drive or C colon, backslash data, backslash WP, backslash Madison, backslash summarie spelled with an IE at the end.

Then it has a list of names, which looks likes a directory and it refers to a number of documents. Have you seen this collection of documents before?

A I have.

Q Where have you seen it, initially?

A Well, I can tell you this came from our hard drive. This is a directory of this -- this is a

45

printout of this directory from our hard drive. And these are the transcript summaries.
Q So you maintained all the summaries in a single hard drive?
A I did.
Q Were you given a disk with copies of the transcripts on them by different people working on them?
A That's true, I was.
Q Are the documents contained in here the actual summary transcripts that were prepared by the Office of General Counsel?
A I'm sorry. Could you restate that?
Q Sure. Are the summary transcripts -- are the documents contained in here a collection of the summaries of the transcripts that were created by the Office of General Counsel?
A Yes. Those are -- these are the summaries that were created by my office.
Q You said earlier that you may have included some of the summaries, all or some, in the package of documents you put together for the White House on the

46

23rd.
Were you asked to include those in the production, or was this something you did on your own initiative?
A I believe I would have been asked.
Q Would you have put something in there you were not told to put in there?
A Probably not.
Q Do you know if any of the mini summaries or smaller summaries were included?
A No, they were not.
Q Were those prepared yet?
A Probably not, no. They weren't prepared until right before the hearing.
Q That was a little later?
A Yes.
Q Did you provide the Treasury IG's office with any copies of the summaries to assist them in their investigation?
A I don't think so.
Q No?
MS. KAPLAN: What was your question?

47

MR. O'CALLAGHAN: Whether the summaries were provided to Treasury RTC IG's office to assist them in their investigation.

BY MR. O'CALLAGHAN:

Q I believe that was the question I asked.

A Right. It was.

Q Did you -- we were talking about reviews that were done on the transcripts, and I believe one of the purposes you said for the review that was conducted by you was to produce summaries.

Were other reviews that were conducted of the transcripts for other purposes?

A Yes. The transcript summaries were used for other purposes, yes.

Q And what were they used for?

A I think just general preparation for the hearings.

Q Did you ever -- were you ever involved in a process of checking the transcripts for accuracy and then providing suggested edits to the transcripts -- excuse me. Let me withdraw that question.

We discussed earlier that your office

48

received copies of the IG's draft report. Is that right?

A Yes.

Q Did you participate in a process where suggested revisions or edits were provided by your office to the IG's?

A On the draft report?

Q Correct.

A Yes, I did.

Q What was your participation on that? How was it run?

A I think there were a couple of people involved. I can't say exactly.

Q Can you tell me who you remember was involved?

A I would assume David Dougherty was involved, perhaps David Dougherty. But I do recall reading through the draft report in light of the transcript summaries. I would read through the draft report and look for quotes from the transcripts.

And I was to make sure that the quotes or the -- the references to the transcripts were

49

factually accurate.
Q Were you looking for all quotes or any specific kind of quote?
A No, just to make sure that the report was accurate.
Q It was a blanket search for references to the transcripts?
A That's correct. But we also searched for grammatical errors, punctuation errors, poor writing style.
Q You and David Dougherty were involved in this process, you think?
A I believe David Dougherty was, but I know I was for sure.
Q Were there more than two people involved, or were you guys doing all the work?
A It could have been just the two of us.
Q Did anyone review the work you did after -- actually, let's go a little more slowly.
After you reviewed the report for quotes or references to the transcripts, grammatical errors poor writing style, what did you do? Did you prepare

50

a document?
A I guess we prepared a list of suggested comments that we thought should be considered in making a final report.
Q I would like to show you a document that bears the Bates Numbers 14934 through 14938. Take a look at it. Let me know when you have had a chance to review it.
MR. O'CALLAGHAN: Counsel, please do the same thing -- feel free to do the same, excuse me.
THE WITNESS: Okay.
BY MR. O'CALLAGHAN:
Q Have you seen this document before?
A I have.
Q For the record, it is a multi-page document entitled Suggested Revision to IG Report, and it lists different page numbers at the top of each paragraph, and there is also a bunch of handwritten notations that occur throughout the document.
Do you recognize the handwriting on the document?
A I think some of it is Steve McHale's

51

handwriting, and I believe this is my handwriting.
Q When you say this, what are you referring to?
A Referring to the third page of the document, Page 14936, the handwriting at the bottom regarding page 12.
Q The neater print with the arrow?
A Yes.
Q I think that accurately describes it. Is this document a draft of the type of document you just described?
A I think it is, yes.
Q Did Mr. McHale -- did you provide numerous drafts of a document of this sort?
A We might have made several drafts, yes.
Q Over what period of time?
A Probably in a weekend or a day.
Q So this was a quick turnaround project?
A Yes.
Q Did your office eventually provide edits to the IG's office?
A Yes, we did.

52

Q Who were they provided to?
A I don't have -- again, I did not transmit the final suggested revisions to the IG's office, but I believe -- so I don't know.
Q And of course, you know, all these questions are, if you know, if you have heard. And I can only ask you what your knowledge is, but have you ever heard who they were delivered to?
MS. KAPLAN: Could we just make sure we distinguish between when you are asking him do you know or when you are asking --
MR. O'CALLAGHAN: You're right. I apologize.
BY MR. O'CALLAGHAN:
Q Have you ever heard who the edits were delivered to?
A I don't think I know.
Q Do you know who made the delivery to the IG's office?
A I don't know.
Q Have you been told?
A No.

53

Q I want to show you another document, another one-page document. It bears the Bates 014958, it appears to have -- and it's a July 29, 1994 memorandum for Ken Schmalzbach from R. Peter Rittling. The subject is review of the OIG's Final Chronology of White House Contacts. Have you seen this document before?
A I have.
Q When did you first see it?
A I believe it was July 29, 1994.
Q Is that when you drafted and wrote the final copy of the document?
A Yes, I drafted this.
Q Those are your initials next to the --
A Yes. That's my signature.
Q What is this document?
A It is a memo to Ken Schmalzbach from me, I guess, providing a brief summary of my comments on the final chronology produced by the Inspector General's office on its investigation of the White House/Treasury contacts.
Q The first sentence says the OIG

54

incorporated many of our recommended changes in the final chronology. How did you -- do you know that that happened, just personally sitting here?
A I can't recall that, no.
Q Do you know what the basis was for that statement?
A Well, I went through -- I am sure I compared our -- the final copy of our suggested changes to the final OIG report.
Q Did you have any discussion with anyone in the IG's offices?
A No, I did not.
Q Do you know whether --
A Let me go back. I don't recall having any discussions with the Inspector General's office about the -- what, about the final report?
Q About suggested edits that were accepted or incorporated into the final chronology.
MS. KAPLAN: Can you say it once more?
MR. O'CALLAGHAN: The question?
THE WITNESS: Yes.
BY MR. O'CALLAGHAN:

55

Q Sure. It is getting late. I'm probably getting a little disjointed here, but let me try again.

The question is whether you had any discussions with anyone in the Inspector General's office about any edits made by your office that might have been incorporated into the final chronology?

A I don't recall having any discussions about final edits being incorporated into the final report.

Q Did you have any discussions with anyone in the Inspector General's office around this time period?

A I did.

Q Who did you talk to?

A I believe I spoke with Francine Kerner.

Q What did you talk to her about?

A I asked her for a copy of our suggested changes.

Q Would she have been provided with a copy of the suggested changes?

A She must have been a source. My recollection is that we did not have a copy in our

56

office of our suggested changes to the IG report. And I needed to get a copy, and I asked Francine if she had a copy.

Q And did she?

A I believe she did.

Q Did she provide you with one?

A If my recollection is correct, I believe she did.

Q How did you know to ask her for a copy of the suggested edits?

A Because she works in the IG's office.

Q Had you had previous contact with her during this time period?

A I see her in the hall on a regular basis.

Q Any discussions about the investigation --

A No.

Q -- with her, excuse me?

A No.

MS. KAPLAN: Can I just go back and ask you on a question you asked?

MR. O'CALLAGHAN: Sure.

MS. KAPLAN: The document that you are

57

asking if he went and asked her for --
MR. O'CALLAGHAN: Were the suggested edits produced by the Office of General Counsel's Office.
MS. KAPLAN: By your office?
THE WITNESS: That's correct.
MS. KAPLAN: So it would have been a document from your office that was in her office?
THE WITNESS: Correct.
MR. O'CALLAGHAN: Correct. That was my understanding.
MS. KAPLAN: I just wanted to make sure.
BY MR. O'CALLAGHAN:
Q Did you have any discussions with anyone in the Inspector General's office with regard to their final chronology?
A Could you restate that, please?
Q Sure. Any discussions with anyone in the Inspector General's office with regard to their final chronology?
A I don't recall any, no.
Q Did you have any discussion with anyone in the Inspector General's office at any time during the

58

process when they were preparing either the draft or the final chronology?
A Like I said, I ran into Francine Kerner in the hallway on a regular basis. Her office is just above mine. And generally, I would say hello, how are you. And she would respond. That was about the extent of our conversation.
Q Did you ever ask her what she thought of the suggestions that your office had put to her?
A I believe I might have asked her what she thought about the suggestions.
Q What did she say?
A I think she said it is up to the IG's office, something like that.
Q She was counsel of the IG at the time. Is that right?
A Right.
Q Was she helping coordinate the investigation?
A I don't know that.
Q Did she provide the suggested edits to the IG's offices?

59

A I don't know that.
Q Were you ever told that she provided copies of the edits to a drafting session of both IG's offices when they were in the process of doing the final report?
A I don't know that.
Q Do you know whether anyone in the IG's office other than Ms. Kerner knew that suggested edits had been made by the Office of General Counsel?
A No, I don't know that.
Q Have you ever heard that?
A Well, your question is whether I know -- whether someone in the Inspector General's office other than Francine Kerner knew that my office made suggested changes.
Q Yes.
A I can only say that that must be the case, because they did make changes to their final report.
Q Do you know whether they were informed the -- what the source of the suggested edits were?
A I can't say that I know that. I don't know.

60

Q Do you know that they weren't told?
A I don't know.
Q Did Ms. Kerner ever discuss with you suggested edits that she might have for the -- any of the drafts of the IG report?
A I don't recall such a conversation.
Q Did she ever show any documents that she prepared to that end?
A To me?
Q Yes.
A No. I don't recall seeing any documents like that.
Q I'm going to show you a document Bates stamped 035 through 038. Take a moment to review that.
(Thereupon, a discussion was held off the record.)
MR. O'CALLAGHAN: Back on the record.
BY MR. O'CALLAGHAN:
Q Have you seen this document before?
A I don't think I have ever seen this document before.

61

Q Mr. Rittling, have you been involved in the Treasury document production to the committee this Fall?
A I have been.
Q What have your responsibilities been in connection with that?
MS. KAPLAN: Can I ask why this is within the scope of this hearing?
MR. O'CALLAGHAN: It has to do with the document production of the document request we made pursuant to the resolution, and we have some concerns about whether the document production was hindered in any way or properly conducted, which is clearly within the scope.
MS. KAPLAN: Okay.
BY MR. O'CALLAGHAN:
Q Would you describe your responsibilities with regard to document production to the committee?
A I was responsible for preparing documents for production to the committee.
Q How was the document production conducted, if you would walk me through how --

62

A We received a request from the committee. We then sent out a memo to the offices, the departmental offices, which is the Office of the Secretary or the Treasury headquarters office, asking them to provide responsive documents.
They did or did not provide documents depending on whether they had some or not. And they submitted a certification explaining that they did or did not have documents.
We then prepared those documents -- we first reviewed the documents for responsiveness, and responsive documents were produced to the committee, and non-responsive documents were not.
Q Who made decisions as to whether documents were responsive to the committees' request?
A The attorneys who were responsible for reviewing the documents.
Q Who was that?
A I did some of it. Virginia Rutledge.
Q What office is she with? General counsel?
A Yes. General Counsel's office. Everyone here is in the General Counsel's office. So Virginia

63

Rutledge, Adele Sigmund and Karen Dorsey.
Q Who coordinated the document production?
A Brad Buckles.
Q Anyone else involved?
A Counsel.
Q When you said counsel, you pointed to counsel to your right, Ms. Kaplan. Right?
A Right. My counsel, the Department's counsel.
Q Have all responsive documents been produced?
A I don't know. I mean, I'm not working on it, so I don't know if they have completed their production or not.
Q When did you stop working on it?
A A couple weeks ago.
Q Why did you stop working on it?
A Because I believe my name was coming up in the depositions quite a bit.
Q Do you know specifically what reference is being made to you in the depositions that caused you to be taken off?

64

A No, I don't.
Q Do you know the approximate date when you stopped working on the production?
A Well, it was possibly a week from last Monday. It was the week of October 28th, I believe.
Q The week before Halloween?
A Right.
Q Are you aware whether any documents responsive to committee requests have been destroyed during the course of the production?
A Am I aware that any documents responsive to the committee request were destroyed?
Q During the course of production.
A I'm not aware. What do you mean?
MS. KAPLAN: Are you talking about production that this group was responsible for?
THE WITNESS: You've got to clarify.
BY MR. O'CALLAGHAN:
Q Specifically, the Treasury Department's production.
MS. KAPLAN: Can we clarify again? You know there were two different -- you must know there

65

were two different productions.
THE WITNESS: The production I was working on?
BY MR. O'CALLAGHAN:
Q Correct.
A Were any documents--
Q -- responsive to the request destroyed at any time for any reason?
A No.
Q During the production?
A Not that I know of.
Q Are you aware that any documents responsive to the committee's request to any agency in connection with this hearing were destroyed during the course of production?
A Any documents responsive -- any Treasury documents?
Q No. Any documents responsive to the committee's request to other agencies--
MS. KAPLAN: To other --
MR. O'CALLAGHAN: Requests made to other agencies.

66

MS. KAPLAN: Requests made to other agencies?
MR. O'CALLAGHAN: Yes.
THE WITNESS: You said responsive to other agencies.
BY MR. O'CALLAGHAN:
Q I'm sorry, I misspoke.
A So --
Q Let me clear up the record.
A I don't know. I can't say for sure whether that has occurred or not.
Q I can ask it very specifically. Are you aware of any shredding of documents that has occurred during document productions to the committee?
A Shredding of any documents anywhere?
Q Any documents at all. Correct.
A I'm sure documents have been shredded somewhere in the department, not that they related to this. I mean, your question is, Has any document ever been shredded in the Treasury Department during the time that we're responding to this?
Yes, I'm sure.

67

Q I'll be more specific. It might be easier. I think you know what I'm asking about.
A No. I'm happy to -- please be specific.
Q Have you been in the presence of anyone who has shredded documents that are responsive to any of the requests the committee has made of different agencies in connection with these hearings, whether originals or duplicates?
A I don't know if they were responsive or not.
Q Any documents being gathered in the course of production done in connection with the committees request for documents?
A Been shredded?
Q Yes.
A Yes, I have seen it.
Q Could you describe the circumstances of what you -- the shredding that you saw?
A I was at -- I was in the inspector general's office suites, Treasury inspector general's suites at the ICC building.
And I saw an inspector general -- an

68

employee in the inspector general's office shred some documents.
Q What were you -- why were you over at the Treasury inspector general's office at ICC?
A I went over there to identify treasury documents in their position.
Q For what purpose?
A For the purpose only of identifying treasury documents. They did not know what the documents were.
Q In connection with the production committee?
A I believe so.
Q Who were you with?
A Rick Doery.
Q When did this occur?
A I think it was October 18.
Q What time of day?
A 11:30 approximately, a.m.
Q What -- if you can describe the circumstances surrounding your witnessing him shredding paper.

69

Now, he was -- you were pointing out treasury documents to him. Is that correct?
A That is correct. I went over there and there were two boxes of documents.
Q That were in Treasury IG's possession. Is that right?
A There were several boxes of documents on a table. Rick moved a couple boxes away. There were two boxes of documents. I went through the documents briefly just to get an idea what was in there. I could tell some of the documents were Treasury documents by the Bates Number, not by the actual number, but by the, I guess, the style of the print.
Q Where had these documents -- how had they come into Treasury IG's possession, do you know?
A Those documents, I don't know.
Q Did you identify Treasury documents for Mr. Dougherty?
A Right. I did say that some of these documents with this type of Bates stamp are Treasury documents.
Q And what did he do after you told him that?

70

A He said, Oh. He said thank you. And then -- go ahead.
Q Please, finish your answer.
A Is that what you mean? Is that what you are asking?
Q Sure. Did he ask you to do any further review of any other documents or provide an index or anything?
A No. There were other documents that were non-treasury documents. He then determined that those were White House documents.
Q And he was inspecting those?
A Well, I pulled one out, and I said this is not a Treasury document, but I can't tell you where it is from for sure.
Q How did you know that wasn't a Treasury document?
A Because the number was different from the Bates stamp number we use.
Q Do you know what was contained in the document you pulled?
A No, I don't know.

71

Q What it was?
A No, I don't. I don't know.
Q Did you hand it to him?
A No, I don't think so.
Q What was he doing while you were going through the documents?
A Well, that was -- my initial review was very quick, took a second, really, a couple minutes maybe. He was standing next to me and watching me identify the documents.
Q What happened next?
A He then attempted to arrange the documents between Treasury documents and non-Treasury documents, but that was impossible because they were very intermingled. Treasury and non-Treasury documents, extremely intermingled. So.

It would have taken two days to separate them, not two days but some time. That was not why I was there.

Q After -- did he stop trying to do that after a while?
A He did.

72

Q What did he do next?
A I believe he was thinking about the documents, deciding what to do next.
Q Did he ask for your advice on what to do next?
A Well, because these were Treasury documents, we had certain conditions we wanted to place on his producing those documents to the committee.

I voiced those conditions.

Q Did he start pulling any documents to start gathering them for organizational purposes?
A He did. Sure. I mean, the documents -- he would pick them up, and he would ask me to hold them while he was arranging things, and I did, of course.

And the documents were clipped and stapled, in some kind of order, but not on a chronological or a numerical order.

So perhaps we might have pulled them apart, but I can't recall exactly. But he did attempt to a arrange them somehow. But I think after a couple minutes, he realized that it would take too much

73

time.
Q And then what happened after your discussion about the Treasury handling of documents concerns?
A He determined that the non-Treasury documents were probably White House documents.
Q Did he do anything with the documents after that?
A What?
Q Did he determine to pull out duplicates, or did he start new files? Did you leave the office?
A He found an index to the White House documents. Then he found three other copies of the index to the White House documents.
Q Was it an index that was generated by the White House or was it --
A It was. It is the same index that is published in those green books that the committee published after the 1994 hearings.
So at the beginning of the White House production that is contained in the green books, there is an index. It is the same exact index.

74

We also have a copy at the main Treasury. It is dated July 1, 1994, I think.
Q So he showed you a copy of it?
A Well, he pulled out a couple of copies and he asked me a question. He said I know these are White House documents and asked me to see if they had the same Bates Number, something like that.
Q What did he do with the document that he pulled?
A You mean the indexes?
Q Correct.
A He looked at them, paged through them, I think, to make sure that they were duplicates or what they were.
Q Did he look for handwritten notes, do you know?
A I don't know.
Q What did he do after that?
A He shredded the duplicates, or the extra copies.
Q Do you know if he kept at least one copy of the document.

75

A Definitely, he kept at least one copy.
Q Did you assist him in any of the shredding?
A I don't recall doing so.
Q Did you run any documents through the shredder?
A I don't recall doing so.
Q Were you standing by him at the shredder when he was doing it or giving him a hand?
A Well, it was a very small room, so unless I left the room, I believe I might have at one point, because I did to walk around the little bit.
I was always standing next to him. But as he was doing that I was continuing to look at the documents, because I had some questions about what was actually contained in the two boxes.
Q Was there anyone else in the office when this was going on?
A There was one gentleman who worked for the inspector general's office who I had never seen before, I had never met at that time, but he walked in and out maybe five times during the time that we were there.

76

Q And did you engage him in a conversation at all?
A I might have said hello or something.
Q Did he make any comments to you?
A Not really.
Q Do you know what his name is?
A I don't know.
Q Have you ever been told -- were you introduced to him or --
A I don't think I was introduced to him.
Q Did Rick know him?
A I believe he did.
Q Rick didn't introduce you?
A No, I think he did.
Q Do you recall saying that -- when this gentleman walked in the room, do you recall saying these words, Ah, a witness, or something to that effect?
MS. KAPLAN: Could we see what you are looking at?
MR. O'CALLAGHAN: Sure.
BY MR. O'CALLAGHAN:

77

Q I'm asking you independent of this.
A Could you restate your question?
Q If you recall saying in a joking or regular manner, Ah, a witness --
A I believe I said that --
Q -- or words to that effect?
A -- to that gentleman. You're a witness to this or something like that.
Q What was the context of that?
A Well, this was during the time that Rick was shredding these copies. And he, this man, was walking in and out, and I merely wanted to make him aware of the fact that he may be asked about this in the future, and he should realize and he should know of what is going on, that Rick is shredding copies of this index.
Q So you alerted him that --
A It was half-joking, but half-serious, realizing this is a very sensitive matter, and everything is questionable. And this gentlemen should be aware of this.
Q You alerted him that you were just -- that

78

just duplicates were being shredded?
A I didn't explain it, no.
Q Okay.
A But perhaps I thought it was obvious, and he would know that.
Q Did he seem concerned or --
A No, I don't think so.
Q You have been involved in a number of document productions since you have been a lawyer. Is that right?
A That's correct.
Q During the course of document productions that have you been involved in, has it been your practice to shred duplicate copies of documents that are being produced?
A I can only speak personally in the immediate future -- most recent past, I don't recall shredding documents, no. I mean, it wasn't my practice to shred duplicates.
I can't remember -- I was in private practice before working at Treasury, I can't recall what we did with the document productions. It could

have been the case that we shredded duplicates. I just don't recall?

MS. KAPLAN: You're asking about this production?

MR. O'CALLAGHAN: No. I'm just asking him In general. That is how the question phrased.

THE WITNESS: I think it could have been -- when I was in private practice, I think it was the -- if there were duplicate copies of a production, because we would be making production to the other side, we would destroy duplicates. Otherwise, they would get confused with the production or lost or something.

Q In connection with this, with this inquiry and your involvement in any document productions for Treasury, have you shredded any duplicates of any documents during the course of production?

A In regard to this Whitewater matter?

Q Correct.

A I have not.

Q Do you know anyone who has, other than what you have just testified to?

A No, I don't think so. I don't know anyone who has, no.

Q Do you know anyone who has destroyed any original documents?

A Oh, no. I don't know anyone doing that.

Q This is a one-page document. It doesn't have a Bates stamp. It wasn't provided during the course of production, per se.

It is Department of Treasury stationery dated October 18. It is a memorandum for James M. Cottos. It's from Ralph Martin, Office of Investigation. Subject is destruction of Whitewater documents.

I'll just ask you -- because if I don't, I'm sure the other counsel will -- whether you -- maybe speed this along -- do you agree with the characterization of the event of October 18 that appears in that document?

Does that seem consistent with your recollection? Is there anything in there that is inconsistent with the recollection of your document?

A I thought the time was earlier. I didn't

realize it was 12/20.
Q Other than that?
A I'm not sure I said exactly what he thought I said, but it was -- or that it was obviously in a joking manner. I have no other objection.
Could we take a copy of this?
MR. O'CALLAGHAN: I'll talk to counsel after the deposition. I have no further questions at this time.

EXAMINATION

BY MR. SCHAUER:
Q It is not my intent, Mr. Rittling, to go over any information that you have testified to already. But in the course of following up, I might have to --
A That's fine.
Q -- have you repeat a few things, and I apologize for that. I'll try to be brief.
A I'm happy to answer any questions.
Q The first thing I want to do is, I'm going to show you a document which is a 73-page document which is -- the heading of which is White House

production log, July 1, 1994, Bates X000001 to X001451 and have you take a look at that.
A Okay.
Q Is that a copy of document that Mr. Dougherty shredded that day, October 18?
A I believe that it is.
Q I think you testified earlier that it was published in a green book. I just want the record to be clear. Would that be the book -- actually, I'm not asking you to testify as to the volume number, but Volume A of Senate Hearing 103-889?
A Yes. That would be the White House -- or the Whitewater hearings, yes. It would be in that book.
MR. SCHAUER: Could we go off the record, please?
(Thereupon, a discussion was held off the record.)
BY MR. SCHAUER:
Q So to your knowledge --
A Right. That is the index that was published in those green files regarding the

Whitewater hearings by the Senate.
Q Just to be abundantly clear, some people are quite interested in this, this document wasn't produced or called for in the production to the most recent request that this committee has set out. Is that correct?
A Well, I don't know if it would be responsive, if that's what you're asking.
Q That's the question.
A I don't think that that document would be responsive.
MR. SCHAUER: Just to clarify the record, because these documents will not be amended to your transcript, I just want to make clear that this is a document that was produced not pursuant to this resolution, but to a prior Whitewater resolution, and was published once again in Volume A of Senate Hearing 103-889, page 3 to 75, which was hearings held pursuant to Senate Resolution 229 last Summer.
The document which I showed you was a document that the Minority had as an index of documents that the White House produced in those --

in contemplation of those hearings.
Is that consistent with your knowledge of the document?
A It is.
Q Do you know whether in the course of normal conduct the IG's office, whether or not people throw documents out, or whether they are always shredded?
A I wouldn't know that.
Q You testified earlier about your preparation of summaries of transcripts, and there was various testimony that you gave on the use, to your knowledge, of those summaries. Is that correct?
A Yes.
Q I know you testified that you can't recall one way or another whether or not you provided those summaries to the White House. I just want to clarify that at one point you testified that if you did provide them to the White House, it would have been at someone else's direction. Is that --
A That's correct.
Q But that does not imply that you did or did not provide them?

85

A No, it doesn't.
Q Around that time or prior to that time, did you have contact with specific individuals in the White House's counsel's office?
A I did have contact with individuals in the White House counsel's office at that time.
Q With whom would you have had contact?
A I believe I spoke with Jane Sherburne on the telephone maybe once or twice.
Q Anyone else? Sharon Conaway?
A Perhaps Sharon Conaway. I think that's about it, though.
Q In the course of those discussions, do you recall any request by either Ms. Sherburne or Ms. Conaway for either the transcripts or the summaries?
A No, I don't recall a request like that.
Q Were you aware at that point that either Ms. Sherburne or Ms. Conaway knew of the existence of the summaries that your office was preparing or had prepared?
A I don't know if they knew that.
Q Regarding the draft report which you said

86

that -- you testified earlier that you looked at and then compared with the transcripts and the summaries.
I just want to clarify what exactly you understood your mandate to be. Were you effectively just cite checking the report?
A I think that's a, perhaps, a good way to describe it. It was like a sub and cite assignment.
Q Did anyone direct you at that point or at any point, to make edits to the report in a way which would slant the report in one way or another?
A No, I was never asked to do that.
Q Did you ever do that?
A No, I did not.
Q I just want to return to the issue of the summaries once again. I know that you testified that to the best of your knowledge those summaries were, perhaps, provided to the White House and to your knowledge, perhaps, provided to witnesses?
A Uh-huh (Affirmative).
Q And I wanted to follow up when you said witnesses, did you mean counsel for specific witnesses or actual witnesses?

87

A I think it was both. I'm not sure every witness was represented by an attorney, so if the witness was not represented by an attorney, we would just provide the transcript summaries to the witness.
Q When you're speaking of counsels for witnesses and witnesses in this context, do you mean witnesses from the Treasury Department?
A Right. It would be Treasury witnesses, persons employed by the Treasury Department.
Q Do you have specific knowledge of other witnesses being provided these summaries?
A I don't, no.
Q Any reason to believe -- do you have reason to believe that witnesses that were not employed by the Treasury Department were provided these?
A No.
MR. O'CALLAGHAN: You're referring to the summaries. Right?
MR. SCHAUER: The summaries.
BY MR. SCHAUER:
Q You testified earlier that you were asked to prepare the set of transcripts on the date that I

88

think we have established to be July 23. Is that correct?
A Yes.
Q And you testified that you weren't exactly sure whether or not copies were already made, or whether or not copies had to be made for this production to the White House?
A Right. I wasn't sure if we had already had copies, or we specifically made copies of the transcripts to send to the White House.
Q At one point I think you speculated -- and that's what I just want to clarify, whether or not you speculated -- that copies must have been made the night before. And then you went on to explain that you weren't sure.
I just want the clarify what your recollection is?
A I guess what I was trying to say was that at some point before July 23, we must have made copies. I don't know if it was the night before or a couple days before, but sometime before July 23, we made copies.

89

Q And just to clarify a bit more, copies were made prior to that, but did you have any knowledge of copies being made specifically for the purpose of providing them to the White House?
A No, I don't recall having that knowledge.
Q When asked earlier about deposition summaries that may have went to Sharon Conaway, you said at one point that vaguely sounded familiar. Forgive me if I'm putting words in your mouth. Do you recall testifying to that earlier?
A That the transcript summaries -- I'm sorry.
Q Right. That transcript summaries went to Sharon Conaway. It was a specific summary that we were discussing earlier.
A Is that the question about Katsanos?
Q Yes.
A No, I don't recall anything like that. I don't recall that specific summary going to Sharon Conaway.
Q I know that we went over this, and it may be clear on the record, but I just want to make sure because you know that I know that earlier you were

90

perhaps confusing events.
When you testified earlier about discussions you had with either Mr. McHale or Mr. Schmalzbach regarding your preparation of the documents, the transcripts to be brought over to the White House, you testified at one point that you may have spoken to both of them.
And then I think you later testified that your recollection is that you spoke just to Mr. McHale. I just want the make sure that that is accurate, to the best of your knowledge.
A To the best of my memory, I think in regard to sending the transcripts to the White House, I recall just speaking with Mr. McHale.
Q And in speaking to Mr. McHale, do you recall him relating to you any discussions that went on prior to that decision to transfer the transcripts to the White House?
A I don't recall that.
Q And do you have any other -- any actual knowledge of discussions that went on either between people within the Treasury or between people in the

91

Treasury and the White House regarding the transfer of transcripts from your office to the White House?
A At that time, did I?
Q At that time.
A No, I don't recall having knowledge of discussions regarding the transcripts at that time.
Q Earlier you testified that you had talked with Ms. Kerner and requested that she provide you a copy of the edits that your office had suggested be made to the, at that time, draft report?
A That's right.
Q Did Ms. Kerner indicate that she had possession of that or that she could -- let me rephrase that.
Did Ms. Kerner provide that to you right away, or did she say, Let me go see if I have it; I can obtain a copy; how did the conversation go?
A I believe I went to her office and asked her for a copy, if she had a copy. And I believe shortly after that request, she did obtain a copy.
But I'm not sure where she had to go to get it. I'm not sure how quickly she obtained it. I

92

think it was maybe within a half-hour or less.
MR. SCHAUER: That's all I have.
EXAMINATION
BY MR. O'CALLAGHAN:
Q You were just asked whether the suggested edits that you prepared for the draft chronology was more of a cite check. Is that right?
A I think that's a good way to the describe it, substance and cite.
Q How would you describe the substance that was added?
A To make sure it was factually correct based on the transcripts.
Q So it was more than checking cites and grammar. It was also some substance that was added?
A Right. Like you would a law review article, which is, I think, where you got the phrase from, just like the law school days.
MR. SCHAUER: Can I clarify that?
THE WITNESS: The law school days?
MR. SCHAUER: No, just the idea of substance. I just want to clarify that what you mean

here is that you were checking the substance as you saw them in the transcript and making sure that that substance matched with the referred quote.

THE WITNESS: That's correct.

MR. O'CALLAGHAN: I have no further questions. Thanks.

(Thereupon, the deposition was concluded at 10:20 p.m.)

ROBERT PETER RITTLING

CERTIFICATE OF NOTARY PUBLIC & REPORTER 94

I, FRANCES M. FREEMAN, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Frances M. Freeman
Notary Public in and for the
District of Columbia

My Commission Expires SEPTEMBER 30, 1996

DEPONENT _____

ERRATA

PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
35	20	"I don't why"	to "I don't know why"	
72	17	"on"	to "in"	
75	11	omit the word "to" +		
		replace "the"	w/ "a"	
77	15	omit "OF"		

DEPOSITION OF JOHN T. SPOTILA
IN RE: S. RES. 120

MONDAY, NOVEMBER 6, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of JOHN T. SPOTILA, called for examination pursuant to notice of deposition, at 1:10 p.m. in Room 640–A of the Hart Senate Office Building, before JOANNE LIVERANI, a Notary Public within and for the District of Columbia, when were present:

LOUIS J. GICALE, ESQ.
Majority Deputy Special Counsel
GLENN F. IVEY, ESQ.
Minority Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

CONTENTS

Witness	Examination
John T. Spotila	
by Mr. Gicale	3
by Mr. Ivey	87
by Mr. Gicale	98
by Mr. Ivey	100
by Mr. Gicale	102
Errata	7355

EXHIBITS

John T. Spotila

Deposition Number	Identified
Spotila Exhibits 1 through 3	46, 7356
Spotila Exhibits 4 and 5	63, 7366
Spotila Exhibits 6 and 6	79, 7373

PROCEEDINGS

Whereupon,

JOHN T. SPOTILA

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. GICALE:

Q Could you please state your name, please.

A John T. Spotila.

Q How do you spell that?

A S-p-o-t-i-l-a. I will give you a card if that helps.

Q And your present business address.

A U.S. Small Business Administration, 409 Third Street, Southwest, Washington.

Q And what is your business phone number?

A 205-6713, area code 202.

Q What is your title there?

A General counsel.

Q Now, before I ask you some further

questions with respect to your background, I would like to outline a number of things here, first of all, the deposition is being conducted pursuant to Senate Resolution 120. The resolution establishes a special committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, Capital Management Services, Inc. and the Arkansas Development Finance Authority and other related matters.

Specs 1(b), 2 -- 1(b) 2(b) and (c), and 1(b)3(e) relate to -- outline the purposes of the special committee, and with respect to 1(b)2(b) and (c), one of the stated purposes is to conduct an investigation and public hearing into and study the following matters developed during or arising out of the investigation of public hearings concluded by the bank -- excuse me -- included by the Committee on Urban Affairs prior to the adoption of the resolution. Whether White House is engaged in improper contacts with any other agency or department in the government with regard to confidential RTC

5

information relating to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation -- and that's section B. Section C, whether the Department of Justice has improperly handled RTC criminal referrals referring to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation. And section 1(b)3(e), to conduct an investigation and public hearings into and study of all matters that have any tendency to reveal the full facts about E, the source of funding and the lending practices of Capital Management Services, Inc., and its supervision and regulation by the Small Business Administration, including any alleged diversion of funds to Whitewater Development Corporation.

This deposition is being taken in advance of a public hearing that will be held in November. It is possible that you may testify. We will be asking you a series of questions. You are testifying under oath. If you don't understand a question, let us know and we will rephrase it.

The stenographer will prepare a record of

6

questions and answers. The deposition will be treated as committee confidential until the commencement of the hearings. Prior to the hearings you will receive a letter from the Committee telling you that you may come to the Senate to review the transcript of your deposition and make note of any corrections of transcription on an errata sheet. You may be represented by counsel and I note that you are appearing alone here today.

Objections to the form of questions will be noted for the record. Counsel may object on grounds of privilege or relevance. The Committee Chairman may rule on objections where the witness refuses to answer a question.

Do you have any questions about what I just outlined?

A With regard to reviewing the transcript, is that whether or not I am called to testify or if I am called to testify?

Q Yes.

A Which? Whether or not or -- I am just curious.

7

Q Normally, it would be if you are called to testify, but I believe in some instances if they want to review them here, I can follow up on that after this. We might be able to make them available here whether you testify or not.

MR. IVEY: Yes, I don't know.

THE WITNESS: I just want to make certain that --

MR. GICALE: I will follow up. I believe we can, but I will double-check that.

THE WITNESS: Okay.

BY MR. GICALE:

Q Mr. Spotila, how long have you been general counsel of the Small Business Administration?

A Since, I believe, September 16, 1993.

Q And where were you employed prior to that time?

A Just prior to that I was in Cherry Hill, New Jersey, at a small law firm there.

Q What was the name of that law firm?

A Sacharow, S-a-c-h-a-r-o-w, A-d-l-e-r, G-o-l-d, T-a-y-l-o-r, and K-e-y-s-e-r.

8

Q How long had you been employed with that law firm?

A I had been with that law firm a relatively short period, less than two months. And before that I had been in sole practice as the Law Offices of John Spotila, in Cherry Hill.

Q Now, when -- at the law firm of Sacharow, Adler, did you specialize in any particular area of law?

A Both there and in sole practice I had a -- I really concentrated in interrelated areas, business law, real estate law, trust and estate planning.

Q How long had you been a sole practitioner prior to joining that firm?

A I had been a sole practitioner for quite a few years. I don't recall the specific number, but I would say more than 10. If it is important to you, I can supply that. I just don't recall it offhand.

Q What did you do prior to becoming a sole practitioner?

A Private practice in several small firms, so I had gone from -- perhaps it would be easier if I

9

started from law school and went forward instead of -- it might be easier for me to remember.

Q Fine, okay.

A I graduated from law school in 1971.

Q Where did you go to college?

A I went to Georgetown University as an undergraduate and to Yale Law School.

Q When did you graduate from Georgetown University?

A I graduated from Georgetown in 1968 and from Yale in 1971.

Q What did you do after you graduated Yale Law School?

A After I got out of law school I was with the Department of Justice in the criminal division appeals section.

Q In Washington?

A In Washington. I then --

Q How long were you with them?

A I was with them from approximately the fall of 1971, to I believe it was late summer of 19 -- let's see if I've got all these dates right. I

10

believe it was the end of 1973, the very end of 1973.

I then left there and went to Philadelphia where I was with a law firm called Cohen, C-o-h-e-n, S-h-a-p-i-r-o, and some other names if you need them.

I was with them in all of 1974, into the late summer of 1975.

Q And then what did you do next?

A At that point I left that firm and was in law practice with one other attorney. It was at that point that I was in either a small firm or a sole practice from 1975 going forward.

Q And who were you practicing with after you left Cohen, Shapiro?

A Initially, I was with an attorney by the name of Robert V-e-d-a-t-s-k-y. I was with him for about two years. Perhaps just less -- around two years.

Then I was in sole practice, and then I was with another small firm called Shaiman, S-h-a-i-m-a-n, D-o-l-c-h-i-n, S-l-o-t-k-i-n and

11

Spotila. And then after I left that firm I was in sole practice again.

Q And sole practice until you went to work for Sacharow, Adler?

A Sacharow, Adler; right.

Q Now, did you talk to anyone about the substance of your testimony prior to coming here today?

A About the substance of it?

Q Yes.

A No, I mentioned that -- my wife knows I am here and some people at the office know I am here.

I touched very briefly on the mechanics of it with Mark Stevens, who I know you talked to last week.

Q Have you talked to anyone who has appeared before the Committee for a deposition other than Mr. Stevens?

A No, not to my knowledge. I am not sure who has appeared before you, but --

Q But with Mr. Stevens it was not with respect to substance, but just mechanics; is that

12

correct?

A The only things I clarified with him were a couple of chronology dates that I was -- but beyond that, we didn't get into substance.

Q Which dates did you discuss with him?

A It was a general conversation, first of all, we didn't spend -- a lot of detailed work. I confirmed -- it had been my recollection that David Hale had been indicted in the fall of 1993 and he confirmed that that was true.

I had a general recollection that in November of '93 we'd gotten a request from the House Small Business Committee to supply some information, which we supplied. And -- I think -- I think that's primarily what we talked about, those kinds of dates.

Q Going back to your appointment as general counsel at the SBA, how did you obtain that appointment; how was it that you --

A I am not sure that I understand the question. I can give you a little background and perhaps you can ask more --

Q If you could.

13

A I have known the President for quite a while. I was a classmate of his at Georgetown, and briefly at Yale, although my third year was his first year at the school.

I supported him on a part-time basis when he ran for President. After the election, I wrote to him and indicated that I was willing to devote some time to public service if he saw a place for me in the Administration. I was invited to come down and meet with Erskine Bowles in the summer of 1993, which I did, and I was offered a position as general counsel.

Q Who did you talk to -- after you wrote "him" a letter, the President; correct?

A Yes.

Q You wrote him a letter about your interest in serving the administration; who did you talk to prior to seeing Mr. Bowles about a position?

A I got a call from White House personnel, and I'm not certain the names of whoever it was at the time. I believe that Antonella, P-i-n-a-l-t-o, she was at White House personnel at the time and I

14

know I talked to her, but I candidly do not remember who I talked to when or in what order. She was one of the people in personnel I talked to. I know I also talked with Ginger, L-e-w, who is now the general counsel at Department of Commerce, spoke with her about it. Again, I just don't remember.

Q And did you speak to the President or the First Lady about your -- about the possibility --

A No, I did not. Not directly.

Q -- of working in the Administration.

Well, through anyone else, other than the people you've named, Pinalto and Lew.

A Melanne Verveer, V-e-r-v-e-e-r, is a friend from Georgetown days, so I am sure I would have mentioned it to her. I didn't really carry on a conversation with her, through her with the First Lady or the President. It is possible I would have talked to other people, too, I just do not recall.

Q Between the time you went to school with the Clintons, Mr. Clinton, I take it, at Yale --

A Actually, Hillary was at the law school while I was there as well, although I did not know

15

her as well.
Q The time you worked on the campaign in 1992, did you continue to have some kind of a personal relationship with the Clintons?
A Not -- not in any kind of -- in terms of ongoing, frequent contact. I did see the President in 1988 at a class reunion, for example. You know, I maintained the relationship, although I think occasionally we would get some literature or perhaps correspondence, but I was not in close, day-to-day contact in any way.
Q Okay. And then -- so at some time in 1993 you came to see Mr. Bowles and had a discussion about the possibility of serving with him?
A Yes.
Q Do you know when in '93 that was?
A I believe it was sometime in June. Mid to late June, the best I recall.
Q And how soon after that was there some indication that you would be selected as general counsel?
A I think it was relatively soon after that,

16

but I don't recall specifically.
Q Now you came --
A I guess I should clarify.
I think there was some expression of -- you know, that they were going to make an offer, but then you needed to submit all the various forms and do background checks and the all the rest of those things, so I don't know that there was an offer as such until much later.
Q Did you serve as a consultant prior to being confirmed in this position?
A No. I did attend one or two meetings, I think. In other words, I had come down, where I think my travel expenses were covered to come down for the day, but those were really more for my background, so I did some additional background on the agency, but I wasn't paid for that time. I wasn't paid for that. I just -- they paid my train fare.
Q Do you know when those meetings occurred?
A I would guess August. Perhaps one or two Fridays.

17

Q Who were those meetings with?
A I would have met with Marty Teckler, who was the deputy general counsel. He was then acting general counsel.
Q Who else?
A It is possible I would have sat in on a meeting as an observer, but I didn't participate in any meetings.
Q Were there any discussions at those meetings about the substance of any ongoing cases, and, in particular, for instance, Capital Management?
A Not that I recall, no.
Q Now, your position was subject to confirmation by the Senate?
A No, it was not. It was not a confirmation position.
Q So then you came to the SBA September 16?
A I believe it was the 16th.
Q Now, when you came to the SBA on the 16th, how soon after coming to the agency were you briefed about pending cases, pending matters? Let me rephrase that, would you, that question -- okay,

18

strike that.
How soon after you came to the SBA, on September 16, 1993, did the matter of Capital Management come up in discussions?
A I don't recall the specific day, but it was relatively soon after I arrived at SBA that I learned that we had a case involving a Small Business Investment Company called Capital Management that had been based in Arkansas. It was being handled by Mark Stevens in my office who headed up the SBIC liquidation section for us.
Q Now, as a point of reference, at some point in time you found out that Mr. Hale was an officer in that corporation, Capital Management; correct, or had something to do with the management?
A I would have, sure. As part of that background I am sure it would have been mentioned.
Q In any event, you found at some point in time Mr. Hale was indicted?
A Yes.
Q Now, was this meeting with -- the first meeting or update with respect to Capital Management

19

prior to his indictment or subsequent?
A I am sure I would have heard -- it is very -- it is likely that I would have heard the name of Capital Management before the indictment, but I must say I don't remember the precise day of the indictment so it is hard for me to tell.
Q If, by reference, the date September 23, 19 --
A That's the indictment. The reason I say it is likely I heard it is because I believe Mark went to Arkansas right about the time I came on board -- he may even have been in Arkansas the day I started -- so he would have reported to me in the normal course that he had been in Arkansas and why, namely that he was -- I believe he may have been going down there to get the receivership. Again, you may know that date better than I, but I do recall that he had been down in Arkansas, and so he would have mentioned he was down there for an SBIC named Capital Management.
Q Did he talk to you about this prior to -- before or after your agency obtained the

20

receivership, if you know?
A I don't recall. I don't recall whether he was reporting to me that he had gone to get it, or -- if you know that date offhand, it might make it easier. I just don't recall the date.
MR. GICALE: Off the record.
(Discussion off the record.)
MR. GICALE: Back on the record.
BY MR. GICALE:
Q In any event, you remember some kind of conversation with Mr. Stevens, at some point in time, surrounding the receivership?
A Yes. As you've just refreshed my recollection, apparently we got the receivership on the 15th of September, which was right before I came to the SBA. Mark, in all likelihood, was in Arkansas to get that and he would have come back and sometime after the 16th he would have mentioned to me he was there to get the receivership. You mentioned the indictment was the 23rd of September, so his background briefing of me most likely would have occurred right after the indictment was issued.

21

Q In what manner did he brief you? Was it in your office? Was it an oral briefing or a written briefing?
A I don't have a specific recollection of all -- it is most likely that it would have been an oral briefing. Most typically that was what he would have done.
Q In your office?
A Most likely in my office.
Q Who else was present?
A I'm not sure whether Marty Teckler would have been there. He might have been. I just don't recall. Since I was brand new and Marty had been a career deputy and had been the acting general counsel, I relied pretty heavily on him for background. Candidly, I was trying to learn what a Small Business Investment Company was at the time so I relied pretty heavily on the career people that handled that area.
Q In the first briefing you received from Mr. Stevens, what information did he convey to you?
A He would have conveyed to me that we had a

22

SBIC.
Q I know you said "he would have conveyed to me," and I guess what I would like to obtain from you is what you remember him conveying to you.
A As best I remember -- I mean, when I say "would have," I don't recall the specifics of the conversation. To say that he told me A, B, C and D, I just do not recall that. It does not stand out in my memory particularly because I was being briefed on a lot of different things at this time, and this was one of them. It was -- it was the most current example of a failed SBIC, and he had just taken action on it, so his briefing would have given me summary facts about that, and it was used as an opportunity to tell me something about SBICs which, frankly, I didn't know very much about at the time.
Q Do you recall whether or not he showed you copies of documents related to your agency's investigation of this SBIC and/or the receivership?
A No, he did not show me any documents.
Q All of this was oral?
A Would have been a general oral briefing.

23

Q Do you know whether or not he outlined conversations he had with either the FBI or the U.S. Attorney's Office?
A No, he -- what I do recall pretty much from the beginning of Capital Management is that he mentioned we were cooperating with the FBI and I told him to continue doing that, to handle it in the normal course, both with the FBI and the Department of Justice, but he did not discuss with me any specific conversations he was having.
Q So you don't recall him describing the specific -- strike that question.
Do you recall him describing when the agency had referred this matter to the Inspector General?
A I don't recall whether in the first conversation that we had about it, he mentioned anything about the Inspector General. He may have mentioned that we had made a referral. I know that at some point, early on in September, he mentioned to me that the SBA had made a referral to the Inspector General, who had made a referral to the FBI, which

24

had investigated the owner of this or owners of this SBIC, and I told him to cooperate fully. That was --
Q Do you know whether or not he showed you copies of memos that had previously been sent to Mr. Foren with respect to the status of the receivership or the investigation, with respect to Mr. Hale, by the U.S. Attorney's Office or the FBI?
A I don't recall being shown any memos like that at the time when I first came on. It doesn't stick out in my memory particularly.
Q After that initial briefing, do you recall any subsequent briefing from Mr. Stevens and/or anyone else with respect to this matter?
A Well, Mr. Stevens was handling the case, so he would -- as all of my section chiefs would do -- keep me generally apprised of progress of their work, in this case. He had other SBICs he was also involved in liquidating and -- in some cases liquidating. When I say "he," or the people in his section. He would periodically -- we would typically have weekly staff meetings and he would periodically report to me generally how things were progressing.

25

In the case of Capital Management, that would translate into, if a significant step was taken, for example, when the indictment occurred, which was a week after I got there, he told me that Hale was being indicted and that we were cooperating, and I told him to continue to do.

I think he mentioned that it might be in the newspapers.

Q Did he mention why it might be in the newspaper?

A Because it was Arkansas. Because it was from Arkansas.

Q Did he mention any additional allegations that might come up with respect to -- in the newspapers with respect to the President or Governor Tucker?

A Actually, at the time he said there was no indication that the President was involved at all or anyone else in the White House. That as best he knew from the materials we had there was no involvement of the President.

So again, I --

26

Q What about Governor Tucker?

A I don't recall him mentioning Governor Tucker.

Q Did he mention any other names in terms of your investigation at that point other than --

A Again, I didn't inquire into all the specifics of the case. He mentioned David Hale because David Hale owned 80 percent or whatever of the SBIC and ran it. And I knew there were small businesses they would have been dealing with and obviously it was an investigation so they were going to look into whoever would be involved, but I don't recall him mentioning other -- if he mentioned other people that were going to be investigated, I don't recall who they were. They were not names of people that I knew or people I would recognize.

Q So the only thing you knew at that point was there was going to be an indictment of this individual in Arkansas.

Did he describe to you -- did he tell you that the individual was a judge in Arkansas?

A He may have mentioned that he was some kind

27

of judge or municipal judge or something like that. I think he mentioned that our records suggested that Hale had stolen money or at least -- I am not sure if he would have used the word "stolen," but had reason to believe that he had acted wrongfully.

Q Now, up to this point -- and this is just prior to the indictment -- the information you received from Mr. Stevens, did you, in turn, convey it to anyone else?

A When you say "the information I received"?

Q Well, the briefing, initial briefing you received and then the information that Mr. Hale would be indicted.

A It is possible that I would have mentioned something to Erskine Bowles, who was the administrator, to say that we had this case and that Hale was going to be indicted. I don't have a specific recollection of the conversation, but in the ordinary course it is something I might have mentioned to Erskine.

Q Did you let anybody know at the White House?

28

A I didn't discuss the briefing in any way. It is -- I do not know whether I would have mentioned to somebody that Hale was being indicted -- that we had an indictment being issued. It is possible. We do weekly reports to the White House. We -- again, I would not have gone into any other details that Mark went over with me, but whether I would have mentioned an indictment that was about to be public, it is possible. I don't recall.

Q Is there someone at the White House you would have had some weekly contact with that might have been a person you would have notified of this?

A Back in September, we -- normally weekly reports went through our chief of state, Katie B-r-o-r-e-n. I don't -- in the last two years, obviously, I have dealt with the people in the White House -- I am trying to think who I would have dealt with there.

I don't recall any -- there was no one I had a formal reporting relationship to at the White House at that time, or since then, for that matter, where I would have given weekly reports verbally to

29

anyone.
Q Is there someone that you were more friendly with at the White House that you may have discussed it with in terms of giving them some kind of heads-up on this information?
A It is possible I would have said something to M-e-l-a-n-n-e Verveer, but it would only have been -- I knew the indictment would be public and in the newspapers, so it is possible I said something to Melanne about it. I don't remember anyone else that I would particularly have talked to.
Q Now, why would it have been of relevance to Melanne Verveer if you did tell her?
A I don't know that it would have been of relevance. I was on the job, at this point, a week. And Melanne was a friend who worked in the White House. Probably helped me, in some way, to get the job. So it is possible I would have mentioned it in a conversation with her.
Q Now, what was her position again?
A She is deputy chief of staff for Mrs. Clinton, but I would not have briefed her. I

30

didn't get into the substance of it.
Q How frequently would you talk to Melanne Verveer -- off the record.
(Discussion off the record.)
MR. GICALE: Back on the record.
BY MR. GICALE:
Q How frequently would you talk to Melanne Verveer about this --
A There was no regular basis. I guess you need to understand, I had started at the SBA on the 16th. My family was still in New Jersey. I was living in a -- you know, in an apartment on a month-to-month lease, so I didn't know that many people in Washington. Melanne was someone I had known from Georgetown days, so I had a long -- I had a long-standing personal friendship. So she would be a person that I would talk to as someone that I happened to know in Washington at the time as opposed to her in -- particularly in her official capacity.
I didn't have any kind of -- I didn't have regular conversations, if you will, other than ones with friends, and that tended to be now and then. I

31

don't particularly recall what times that might have been.
Q But if you did let her know, was there any reason to let her know about an indictment of this sort, upcoming indictment?
A I guess to some degree it is speculation. I might have said it because it was coming out of Arkansas and there might be publicity about it and she might be interested in it. But again, it would have been a casual reference, not a -- any kind of in-depth conversation.
Q Did you have any conversations with anyone else about the possibility of Mr. Hale's indictment or the information you had received from Mr. Stevens at that point?
A Not that I recall, no.
Q Now, at some point subsequent to Mr. Hale's indictment, there was a newspaper article in Arkansas with respect to some allegations that Mr. Hale had made.
Did you receive a copy of that or were you notified of that?

32

A I think Mark Stevens made me aware of it at some point.
Q And what did he tell you? Did he show you a copy?
A Probably gave me a photocopy. That would be my guess.
Q Do you remember what the allegations were in that article?
A Part of -- the reason I am pausing, I am trying to remember what I knew then versus what I may have read since then because, obviously, there has been a lot more press coverage of it now than then. My recollection is that he suggested he had been -- perhaps been pressured into some of the things he had done.
Q He?
A David Hale. That David Hale had suggested to the news reporter that some of his decisions with respect to Capital Management had been influenced or pressured.
Q By whom?
A By -- again, I'm doing this from memory --

33

by political figures in Arkansas.
Q Which ones, President Clinton and Mr. Tucker?
A That would be what I recall he said. And I recall when Mark showed me a copy of the article, I asked if we had any indications whatsoever that supported that and he said no, there was no evidence of that in our files.
Q Now, I take it from that point forward, you continued to receive weekly briefings from Mr. Stevens with respect to this case and other cases?
A Not necessarily about -- I would receive weekly reports from all of my section chiefs about what they were doing. It wouldn't necessarily be a weekly report about Capital Management.
Q Right, but this would be one amongst a number of cases that would be discussed?
A Or -- whether it would be discussed or he would give me the -- in other words, he would go over the highlights, as my head of litigation would do or general law, highlights of what they might be working

34

on, and so every now and then he would talk about Capital Management perhaps.
The main discussion of Capital Management, as I recall now, I did not see a particular need for me to get into the details of Capital Management. My instructions to Mark from the beginning were to handle it thoroughly and assertively and in complete cooperation with the Department of Justice and the FBI, which at that point were actively involved in it, and our main focus at SBA was to try and recover money.
I had complete confidence that Mark would do that.
Q Did Mark brief you on the steps he was taking to attempt to recover money from the SBA?
A In general terms, that he was -- you know, they were -- to some degree he was stymied because the FBI and the Department of Justice were investigating and we had to basically wait to see what they were going to do or what they would let us do, so -- I felt comfortable he was doing what could be done.

35

Q In terms of your briefings from Mr. Stevens, did you receive briefings separate and apart from your weekly briefings with respect to the -- to your other cases at that time, with respect to the Capital Management?

A I don't recall special briefings on Capital Management. It is possible -- it is possible that if some event occurred in the case he would tell me, but I don't have a specific recollection of that. It is not as if he had -- frankly, that we were giving it that kind of priority attention. At least that I was. I felt he was handling it.

Q After you received information from him with respect to the newspaper article that appeared, did you discuss that with Mr. Bowles at all or anyone at the while House?

A No, I don't believe so. My only conversations with Mr. Bowles, even when I mentioned the indictment, his instructions to me were do the right thing, just proceed in the normal course. Basically he didn't want to be involved in the details of it.

36

Q You knew that Mr. Stevens from time to time would meet with agents from the FBI and people from the U.S. Attorney's Office after the indictment; were you aware that he was meeting them?

A I knew in general that he was coordinating with them, but I didn't necessarily know when he was meeting or with whom or -- again, I just didn't inquire into that particularly. He would occasionally say he had to go to Arkansas for some purpose. We had taken receivership of the SBIC so he had some work to get involved in, gathering the records and the like, but he basically made the decisions as to what he needed do and I really was not involved in the specifics.

Q So do you know, for instance, whether or not you had any discussions with him with respect to Castle Sewer & Water or Master Marketing or South Loop, S-o-u-t-h, L-o-o-p?

A I don't recall any specific conversations about those matters.

Q Or Campobello?

A I can't swear they never came up, but I

37

don't have any recollection of them.
Q Or Campobello?
A These are names that I am familiar with because they were names that have been in the newspapers and names that have been -- that evidently were business concerns that dealt with Capital Management, but I don't recall specific discussions with Mark about the matters or what our files indicated.
Q Do you recall any discussions with him about the potential involvement of Castle Sewer & Water and Governor Tucker?
A I don't recall any discussions about that.
Q Do you recall whether or not he told you he had had conversations with Mr. Hale and/or his attorney at some point in October of 1993?
A I don't -- I don't have a specific recollection. It is possible he would have told me that he was meeting with Hale's attorneys. I think at some point certainly I knew that he had had conversations with David Hale's attorney. I don't recall specifically whether that was October or at

38

some other point, but it could have been October.
Q Do you recall what he told you about his conversations with Mr. Hale and/or his attorney?
A Well, at the time I know that Mark was attempting to gather more information as to what had happened. And within the limits of what Mark was able to do, given a criminal investigation, he was trying to give us a better idea of how we might collect money that was owed us.
I mean, the suggestion was that, for example, there might be small businesses that owed Capital Management money that, in fact, would repay it. If we knew who owed what -- and that wouldn't necessarily be even against David Hale's interest, because at that point Hale was out. I had learned he was out of the SBIC, so Mark would have attempted to meet with Hale, through his counsel, or his counsel alone, to get more information along those lines so that we may be able to recover more money. The specifics of when he did that or what conversations they had or how much success he had, Mark would not necessarily have gone into detail with me on. And

39

whatever it is Mark went over with me, I don't have a clear recollection of it now. I mean, I just -- it is not something that I made any effort to remember.

Q Do you recall, for instance, whether he talked about discussions with Mr. Hale's attorney, Mr. Coleman, with respect to Steven Smith?

A I don't recall.

Q Or Dean Paul?

A Other than remembering the name "Dean Paul," I don't remember anything else about it. So I just don't recall.

Q Or Tucker or Castle Sewer & Water?

A I don't recall.

And in trying to answer -- I am trying to answer as clearly as I can. Obviously, there have been news articles written since then. I am trying to be careful not to ascribe to a briefing from Mark something I read in a newspaper months later. As best I remember, the briefings were -- background information I got from Mark was general in nature, it was only designed to let me know that he was continuing to give the case proper attention and due

40

diligence, which is what I had asked him to do.

I did not need to know the details of that case any more than I needed to know the details of other cases he was handling and I had plenty of other things to focus my attention on so I made no special effort to try to find out. If he told me some of those details I wouldn't necessarily have made any effort to remember them and, in fact, I don't remember them now.

Q Well, subsequent to the indictment of Mr. Hale, there was a request sometime in November of 1993 from Congressman LaFalce and his committee for some documents from the SBA; correct?

A That's right.

Q Do you recall the date --

A It was --

Q -- of that request?

A It was in November. I believe that the due date for the materials was the 15th of November.

I remember that Mark handled assembly of the materials. He may have had assistance from Marty Teckler. I remember there was quite a rush to try to

41

get the material together to send over to the -- to Congress.

Q Now, using those dates or events as reference points, from the time of Mr. Hale's indictment and when you learned about the newspaper article, from the time you received the request from Congressman LaFalce, do you remember any details about the briefings you received from Mr. Stevens with respect to the information he had obtained with respect to Tucker or Stevens or Master Marketing or the McDougals?

A All I recall is that there were a list of companies, something like 18 perhaps -- I don't know if that's the accurate number, but my impression was there were a number of businesses that we knew Capital Management had dealt with, had lent money to, that there appeared -- the possibility there were some interconnections between some of them, although we did not know for sure. Mark was trying to pursue that.

There had been -- there may have been other news coverage -- I don't remember specifically when

42

it all occurred -- that had suggested that Tucker could be involved or McDougal might have been involved. It is not -- again, it is not something that I was trying to track very, very closely, so -- and I don't have a specific recollection of being briefed by Mark on those details. Obviously, as the case took on more attention my recollection is that in November when the request came in from Congressman LaFalce, there had been some news coverage prior to the request -- there was some news coverage of the request, that is to say that I believe it was reported in the news that on -- it had been reported in the news that the SBA would give some type of report to the committee on the 15th of November, so I would have been aware that it was getting more and more attention. Again, I didn't attempt to do Mark's job for him. I didn't try get into the nitty-gritty of the case.

Q Did you continue to brief either Mr. Bowles or anyone else at the SBA or anyone at the White House between the time of Mr. Hale's indictment in September of 1993 and the time that Congressman

43

LaFalce made this request to you?
A I didn't brief anyone at the White House. If I made any mention at all to Mr. Bowles, it would only have been to say that we were continuing to -- with Mark Stevens in charge and with some help from Marty Teckler, my deputy, we were continuing to work the case diligently in cooperation with the Department of Justice, but I wouldn't have particularly briefed Erskine Bowles in any greater detail because he didn't particularly want to be briefed in any greater detail.
Q Are you aware of anyone else briefing anyone at the White House during this time period, or anyone at some other agency?
A I am not aware of any briefings. No, I am not aware of any such briefings.
Q Or any briefings to people outside the White House. Are you aware of any briefings outside your agency --
A No, I am not.
Q -- during this time period?
A No, I am not.

44

The only other contact with the White House came the next day, on the 16th of November, but from the 15th of November and earlier I am not aware of any contacts. I don't know that they didn't occur, I just don't have any knowledge one way or the other.
Q You don't remember one way or the other?
A No, I mean, I --
Q I want to straighten this out. You don't know --
A In other words, I never briefed anyone and I am not aware of anyone else who was ever briefing anyone at the White House about our case.
Q Would you have had any more conversations with Melanne Verveer about the briefings that you received from Mr. Stevens during this time period?
A I don't think so. I don't believe I did, no.
Q Do you recall whether or not Mr. Stevens told you that they had obtained a number of records from Mr. Hale on a number of occasions?
A Well, the nature of -- when SBA was appointed by the court as receiver for Capital

45

Management in that capacity, it took over in Arkansas the records of the Small Business Investment Company, those would be the internal records that would have involved the actual files for each company they were dealing with and so forth. Materials that were not normally present in Washington, and I think were not present in Washington, the SBA's own files.

The receivership files were, I believe, all in Arkansas and other than being turned over to the FBI, I think they remained in Arkansas at that time.

Q Did he show you lists of documents they had obtained or received -- your agency had obtained or received from Mr. Stevens?

A No, I don't believe so.

Q Or lists of documents they may have obtained from the FBI?

A I don't believe so. I know there were a lot of records, but I don't believe I saw lists of what they were.

Q When you were briefed in early -- I'm sorry, in mid-September, did you ask to look at the file to determine what had occurred up to that point?

46

A No.

Q So once again, if there were memos, for instance, from Mr. Bowles or some other supervisor, do you know whether or not such memos existed prior to your coming to the SBA?

A No, I really don't know.

MR. GICALE: Off the record.

(Discussion off the record.)

MR. GICALE: Would you please mark these for identification.

(Spotila Exhibits 1 through 3 identified.)

BY MR. GICALE:

Q Showing you what's marked for identification as Exhibit Number 1, which is a copy of a letter dated November 15, 1993, to Honorable John LaFalce, from Erskine Bowles, regarding Capital Management Services, Incorporated, can you identify that for me?

A This looks like a copy of the letter that went to Chairman LaFalce, that I was referring to earlier, for the report that was requested for the

47

15th.
Q Did you assist in preparing the response to Chairman LaFalce?
A I don't believe I assisted in preparing it. I believe that Mark Stevens was probably primarily involved in preparing it, perhaps with Marty Teckler's assistance. I was aware of it. I don't think I prepared it.
Q Would you have reviewed it prior to it being submitted to Chairman LaFalce?
A I probably would have read it. If I didn't read it right before, I read it right after.
Q Now, on the third page, the second to last line of that letter, it indicates that, "as additional background, I am attaching further information relating to Capital Management." Was there any other information which was submitted to Chairman LaFalce along with this letter at this time?
A Yes.
Q Did -- were you aware of the information, the additional information that was being submitted with this letter?

48

A I was aware in general that we were submitting information. I don't know, about a box full of it. Mark Stevens had indicated that he had put together materials that he thought were responsive, materials from SBA's files. My recollection is they were some of the forms that Capital Management had submitted to the SBA, and perhaps some of the examination reports that SBA would have done, copies of some things that were public, like the indictment of Hale and probably -- probably the receivership.
Q Do you recall reviewing any of that documentation?
A No, I don't believe I reviewed it.
Q Do you recall reviewing a list of the documents -- the list of attachments that were sent out?
A I don't recall reviewing the list. It is possible I would have seen it. I don't recall it offhand.
Q I am going to show you what's marked for identification as Bates number 002894, a document

entitled "List of Attachments," and these are numbered 1 through 12. Can you review that document, please, and tell us whether you can identify it?

A I am reviewing it. I can't identify it. I don't recall it specifically.

Q Do you recall being presented a list attachments similar to this list?

A Back in November?

Q Yes.

A I don't recall, no. It is possible I was shown. I don't have a specific recollection.

Q Do you recall whether or not one of documents that was sent to Congressman LaFalce was a memorandum referring Capital Management Services, Inc. to the Inspector General for investigations, from the associate administrator of investment dated May 5th, 1993?

A I know now that it was part of it. I don't recall at the time that I knew.

Q At the top of the document marked for identification as Exhibit Number 1, there is a notice which indicates that "the information contained

herein has been determined to be confidential in nature, and, therefore, is not releaseable to unauthorized parties," citing possible violations of federal law including the Privacy Act and the Right to Financial Privacy Act.

Do you recall seeing this notice on the response to Congressman LaFalce?

A Yes.

Q Do you recall discussing why that notice was on that letter with Mr. Stevens or someone else from your staff?

A I don't recall discussing it, no.

Q Were there indications that the information was confidential, and possibly subject to the Privacy Act or the Financial Privacy Act?

A Well, I think we -- I was aware that it was not information for public disclosure. The purpose of adding it to the communication to the chairman, we had received a -- a request from the chairman in his role as chairman of our oversight committee, and my recollection is that he asked for background information about this case because the committee was

51

interested in reviewing the way SBA had administered the program and our oversight of this particular SBIC.

We submitted information, and in sending it over to them, attached the confidentiality notice as we do typically to remind the chairman that this particular set of documents is not for public disclosure, it is for the committee's use. So I would have known that at the time. I don't think there was a specific discussion of it at the time.

Q The list of attachments that I previously showed to you, identified as 0028894, you don't specifically recall this list, I believe that's what you've testified; correct?

A That's correct. I don't -- I believe what I said was that -- you asked if at the time I remember looking over this list and I said I do not recall looking over this list at the time.

Q But since that -- since that time, you have seen the list?

A I believe I did see the list a week later at least. I can explain what I mean by that. I

52

don't mean to be cryptic.

Q No, you are not, go ahead.

A Let me say in quick summary fashion and then you may want to explore further.

The day after we sent this material to the chairman, I received a phone call from Neil Eggleston in White House counsel's office. He asked for a copy -- he had read in the newspaper, apparently, that we were sending a report to Congress. He wanted to know if he could get a copy of it. I sent him a copy of the letter -- I think I -- let me retract that. I think the first thing I sent him was a copy of the press release. Then I sent him a copy of the letter when he asked for that and then he asked whether he could see the attachments and we ended up giving him the attachments.

Once I did that, I mentioned to Erskine that we had gotten this request, because this was out of the ordinary. Erskine Bowles suggested -- asked me whether we had talked to the Department of Justice about it and I said we had not, but we would. So I asked Mark Stevens to call his contacts at the

53

Department of Justice and see if they had any concern about this, or if they had any preference one way or the other even if it wasn't a concern. Mark came back to me and mentioned that they were going to think about it for a day. They did and then a day after that, which I think would have been like two days later, they asked us to get the material back. So I put Mark to work on getting the material back, which he did.

Then, about a week after this occurred, the middle of the following week, Don Mackay from the Department of Justice and a couple of his people and an FBI agent came, and we spent a couple of hours talking about this, and at least in that meeting I believe they showed me a list, so while I may not -- I don't recall seeing it on the 15th or 16th, I believe I did see it in the course of that discussion with Agent Gillis, that's what I meant when I said a week later.

Q Okay. Now, did Mr. Eggleston call you on the 16th, or sometime sooner than that?

A I believe he called on the 16th.

54

Q Were you the first person he called, if you know?

A I have a recollection that he may have talked to Katie Broren, our chief of staff, and that, in fact, indicates that she may have given him my name, because I never met Eggleston before. I had no -- I would not have known him at all.

Q Did Katie Broren tell you that Mr. Eggleston had called and you were to respond to him?

A I don't think so. I think that -- I think that he just called me and said that he had read the paper about this report and could he get a copy of some background on it.

Q Did he tell you whether or not he had been asked to check on this by anyone from the White House?

A I don't recall that he said -- I don't think he said he was asked. I think he just said that he was -- that he was interested in it. I don't know that I remember specifically enough if he would have said one way or the other.

55

Q Did he ask you whether or not it would be appropriate for him to receive the information that you had -- your office had transmitted to Congressman LaFalce?

A It is possible that he would have asked that. I -- again, I am trying to remember as clearly as I can. I don't specifically recall, but it is at least possible he would have said is this information we could get a copy of -- "we" meaning he and the White House counsel's office could get a copy of. I believe he thought there was going to be additional publicity because of the newspaper article he had read.

Q What was your response to him in terms of whether or not it was appropriate for him or people at the White House to have copies of this information?

A Well, the first information I sent him was a press release that had been done by SBA.

Q I am going to show you what's marked for identification as Exhibit Number 3, and the top page is a fax transmission sheet dated November 16, 1993.

56

The time is 11:20 a.m. the subject is Capital Management Services. Is this the -- is this a fax sheet relating to the information you supplied to Mr. Eggleston?

A Yes, yes.

Q Is that your handwriting on the fax sheet?

A No, actually it is my assistant's, Cheryl, C-h-e-r-y-l, S-t-a-u-t-s.

Q And did she prepare this at your request?

A To my recollection, yes.

Q And attached to the fax sheet there is a copy of the press release, from your agency with respect to this matter?

A It looks like a news release and an information sheet attached to it.

Q And this news release and fax sheet attached to it had been previously released to the press or you were about to release it to the press?

A I think it was my understanding that it had been released to the press. At this point in time I don't remember specifically when it was released. It had been prepared the previous day at the time of the

57

submission to Chairman LaFalce.
Q Where did you receive it from or whom did you receive it from?
A Either I or Cheryl would have received it from our public affairs people. I see that Mike Standler's name is on here -- he works at SBA in the public affairs office -- so I am not sure specifically where it came from, but --
Q So the first thing you sent him was this fax?
A Right, to give him background on it. And then to carry through your question, you asked whether he -- indicated whether he could have additional material or whatever. When Mark had put together this submission of these materials for the Chairman, my recollection is that he had said that there was really nothing in these materials that was of particular -- I will call it "significance." I don't mean to -- that may not be quite the right term. I don't mean this was not a significant case, but it wasn't something that would affect the investigation if it became public. It wasn't

58

something that we had any -- was of any dramatic content. These were reports that the SBIC had filed and had its own copies of. These were examination reports that were sent to the SBIC afterwards, so these were not materials that, as I understood it at least, that had the potential to have any negative impact on what anyone was doing with regard to the case.
They were background information. And, in fact, I seem to recall that Chairman LaFalce was unhappy when he got the material because he thought it was an inadequate response to his request because it didn't have as much information as he thought he was going to receive.
So, kind of with that as background, when Eggleston asked for more, he asked if he could have a copy of the letter, which I gave him a copy of. We ended up faxing a copy of the letter to him. Then he asked whether he could have the attachments. When I say "he asked," in at least one of the contacts I believe he might have just left a message for me that -- I don't mean to say I had several

59

conversations directly with him, it could very well have been Cheryl that took a message that Eggleston had called and he had gotten the fax and, by the way, could he have the letter, but the message was relayed to me that he wanted the letter if possible. We sent it to him. He asked if he could see the materials that were going to Chairman LaFalce since they would be over at the Hill and he was interested in having information, so he would be aware of the background in case there was news coverage or whatever, and so with regard to that material, I was not comfortable mailing it to him or whatever. He ended up coming over and physically got the material.

Q Physically got the material from you?

A Yes, I had gotten a set of these materials and I just gave it to him.

Q Who did you get the set from?

A Mark Stevens.

Q He delivered it to your office?

A I don't remember whether he specifically did. It came from his office, but yes, a set.

Q Was delivered to you?

60

A I don't recall at this point whether I already had a set that Mark would have had available to me or whether I requested a set. I don't have a sense that I had a set made up for Eggleston. It may have been a second set. I don't remember exactly.

Q Once again, did you review that set before you handed it over to Mr. Eggleston?

A No, I didn't. I didn't think it was -- my understanding from Mark was that there wasn't really all that much in it.

Q Did you know that the information contained in it was not information in the public domain?

A I was aware it was not to be released to the public, that's right.

Q That it might be subject to the Privacy Act or the Financial Privacy Act?

A I was aware of the notice on the letter that we read earlier.

Q Were you aware of the fact that the notice applied to the attachments as well as the information contained in the letter?

A Yes.

61

Q But despite that you still believed that the White House -- you could make this available to the White House?

A In making it available to the White House counsel's office, I wasn't -- I did not view that as being released to the public.

We had received a request from our oversight committee relating to how the SBA was administering the program; it appeared to be, you know, kind of an executive branch question, if you will. So when the White House counsel's office asked for this background, I'd have certainly expected them to respect the confidentiality of the material, and it would be background for them since they also obviously have an interest in how we do our jobs in administering programs. That's how I viewed it at the time.

Q How do you view it now?

A Well, when we called the Department of Justice, when Mark did, he spoke to someone there, and got a call back later and they indicated they preferred to have the materials back. We got the

62

materials back right away, Mark took care of that. As I mentioned, a week later an FBI agent talked to me for a couple of hours and the Department of Justice did. Don Mackay indicated to me he didn't feel we had done anything wrong, but he was concerned we might create a perception of problem. In retrospect, I wouldn't handle it the same way, but I had been there two months and it appeared to be a reasonable request. I don't think I would handle it quite the same way today, but my hindsight would be closer to 20/20.

Q The Privacy Act doesn't -- the constraints are whether or not it is released to the public, it is just there is a restriction in terms of releasing information like this; correct, whether it is -- to anyone outside the agency?

A I don't know that I should get into interpreting the Privacy Act.

Q In any event --

A I am trying to indicate what I did and why I did it.

Q Withdraw that.

63

(Spotila Exhibits 4 and 5 identified.)
BY MR. GICALE:
Q I show you what was marked for identification as Exhibit Number 4. This is a fax sheet dated November 16, 1993. The time is 3:20 p.m. This is regarding the subject of Capital Management. This is to Mr. Eggleston from John Spotila; is that correct?
A Yes, it is.
Q There is a letter --
A There is a letter dated November 16, which says "hand delivered it is to Neil Eggleston." It says "enclosed is a copy of Erskine's letter of yesterday to Chairman LaFalce with confidential attachments." My recollection is that we faxed -- that I faxed this letter to Eggleston, but that the original of this letter and the attachments were hand delivered to Eggleston. He came over to the SBA to pick it up.
MR. IVEY: What exhibit was that?
MR. GICALE: This is Exhibit Number 4.
BY MR. GICALE:

64

Q The letter is dated November 16, 1993 to Neil Eggleston, associate counsel, Office of the White House Counsel, and signed by you?
A Yes.
Q And attached to that is the copy of the November 15, 1993 letter to Honorable John J. LaFalce from Mr. Bowles regarding Capital Management Services, Inc.; correct?
A Yes.
Q Which is a copy of the letter you earlier referred to as -- and which has been marked as Exhibit Number 1; correct?
A Yes.
Q Now, other than inquiring of Mr. Stevens as to the name of somebody at the Department of Justice that you or he could talk to with respect to their feelings on White House's receipt of these documents, did you participate in any other way in the receipt of them when they were returned?
A I had Mark Stevens handle all of that, so he -- I had no direct involvement with that. He ultimately told me he had the materials back and he

65

noted their return.
Q I am showing you what was marked for identification as Exhibit Number 2, can you identify that for us, please. And this is a letter dated November 20, 1993, to John Spotila from W. Neil Eggleston.
A Yes, this is the cover letter that he sent over -- gave Mark, I guess, when he returned the attachments to Mark.
Q I am also going to show you another copy of this, marked for identification as Exhibit 5, is that another copy of the same letter?
A It appears to be a copy of the same letter.
Q Now, did you see this letter when the documents were returned?
A I probably saw it the following week. I know I had seen it as of when we met with Mackay and the FBI agent.
Q Now, when you discussed this matter with Mr. Bowles, did he suggest to you that you contact the Department of Justice?

66

A When you say "this matter," you mean this --
Q The fact that you had sent these documents over to the White House.
A Yes. As I mentioned, because this was not something that happened before I mentioned to him that I had gotten a call from the White House counsel's office. We had made his materials available, so he raised the question with me as to whether we had told the Department of Justice and whether they were content with what we had done. So we had told him we had not yet, but we would immediately and we did.
Q Now, according to your testimony, you talked to Mr. Bowles after you sent the documents over, but subsequent to talking to Mr. Stevens about whether or not it would be appropriate to send them over?
A My recollection -- I spoke with Mr. Bowles after the materials had gone to Eggleston -- Eggleston, Eggleston. I am not sure how he pronounces it.

67

The conversation I had had with Mark Stevens about the materials, I believe would have taken place on the 15th, and it was in the context of what we were sending to Congressman LaFalce, the nature of the materials being sent, which were described to me as routine in nature, at least as I recall.

I don't recall that I spoke specifically with Mark Stevens to say to him that I had this call from the White House counsel's office, in that we were sending these materials over to them that day. I don't know that I had a specific conversation with Mark where I specifically discussed that with him. It is possible that I did or that I told him immediately afterwards.

Q Between the time Mr. Eggleston asked you for this information and the time you turned it over to Mr. Eggleston, did you talk to Mr. Stevens or anyone else about whether or not it was appropriate to send it over to the White House?

A My recollection is that I had a conversation with Marty Teckler, my deputy general

68

counsel, in general about material we could make available to the White House. And again, I do not have a clear enough memory as to -- I am not saying that I specifically had the conversation with Marty Teckler to say that I had this call from Neil Eggleston and should I honor it, but I had general guidance from him that had given me the impression that we were permitted to make this kind of information available to the White House on request.

So the combination of that general guidance from Marty and the general statement from Mark that the material was not particularly sensitive guided me in the decision I made to make it available to Eggleston.

Q And the general guidance could have occurred prior to the time that Eggleston called you?

A It could have. I don't recall the specific date.

My general sense is that it was about the same time and that it was prior to the Eggleston -- to the delivery to Eggleston, but I don't remember specifically what it was.

69

Q When did Mr. Bowles first tell you he was recusing himself from this matter?
A Well, throughout the time I was there, basically, he had indicated he had no particular desire to be involved in the matter. By that I mean he said handle it properly, see it is handled properly. He did not want to know the details of the case. He didn't want to take any direct involvement in the case. And that -- that was not in the -- we didn't discuss that in terms of the formal recusal, he just thought it was inappropriate, given his relationship with the President and given his position as administrator, inappropriate that he have any direct involvement in the case, so he didn't. It was really throughout the time that I was there.
Q From the time you came in September, September 16?
A Really, from the first contact I ever had with him where I ever mentioned this case to him I think that was pretty consistently his position with me at least. I don't think he recused himself in terms of signing a formal letter until perhaps

70

February or March of the following year, of '94. So, in -- and I don't think that he had necessarily any specific conversation with me about recusal other than to tell me that he had decided he was going to formally recuse himself.
Q When would that conversation have occurred?
A I think that probably would have been about the time when he did the letter.
Q In '94?
A '94.
I should add, after the -- after the incidents we were just describing with Neil Eggleston and after the following week, I had the conversation with the FBI agent and the Department of Justice I made my own decision, to basically let Mark Stevens and Marty Teckler, who was our career deputy general counsel, as I mentioned, and the agency ethics officer, handle the case completely and I stepped back from it altogether and let them not only handle the case vis-a-vis Capital Management, but handle the case in terms of other people within the agency. And so --

71

Q That would have been in November?
A That was in November, that's right, as of around the 25th or thereabouts of November. And from that point on it is more likely that Marty Teckler would have had a discussion with the administrator about recusal than I would. Although I am not saying he did have such a conversation, I am saying I tried to remove myself from the case as well other than to make certain it was handled aggressively, in other words, with full cooperation with the Department of Justice and make certain that we did what we could to regain the money that was owed the SBA.
Q Did you memorialize your decision to recuse at this point, in 1993?
A Did I in writing?
Q Yes.
A No.
Q Why not?
A I discussed with Marty Teckler whether some formal recusal was appropriate. He indicated it was not necessary, that I could -- I mentioned to him that I had really a dual objective: One, to make

72

certain we did all the things that were appropriate, and I wanted to rely on career employees to make certain the case was handled properly, but that I did not want to be involved in the details. He indicated I could accomplish that without formal recusal. It wasn't necessary to recuse myself and so I did not.
Q Did there come a time when you did formally recuse yourself?
A In writing? No.
Q Yes?
A Not in writing, no.
Q Who did you inform besides Mr. Teckler that you were recusing yourself in 1993, November of 1993?
A Mark Stevens would have known. Probably our deputy administrator, Cassandra Pulley, would have known.
Q Did you tell Mr. Bowles?
A I might very well have mentioned to Mr. Bowles that I -- I am sure I mentioned to him that I had turned the case over to Marty and Mark. I might have used those terms rather than "recusal." They were handling all aspects of it for the Office

of General Counsel. Which they did.
Q Did Mr. Bowles ever tell you that, in the fall of 1993, that he had recused himself and he thought you should do the same?
A It is possible that he would have -- again that he had recused himself?
Q Right, from the Capital Management matter.
A I don't recall if he used those words. He might certainly have said in saying he wanted no involvement with the -- he might very well have said to me that I should consider the same. It is possible. I don't have a specific recollection of the conversation, but it would have been consistent with the way both he and I approached it.
Q Did you ever tell him that it was not necessary for you to recuse yourself?
A For me to recuse myself?
Q It was not necessary for you to recuse yourself in the matter?
A I am trying to understand the question.
Q Did you ever tell Mr. Bowles that it was not necessary for you to recuse yourself from this

matter?
A "You" Mr. Bowles, or "you" me? You are losing me on the pronoun.
Let me see if I can answer it this way. I don't recall telling Mr. Bowles that it was not necessary for Mr. Bowles to recuse himself. It is possible I would have said that along the same reasoning I just gave you, but I don't recall saying that to him. It is possible I would have said to him that I did not think it was necessary for me, John Spotila, to recuse myself. That would have reflected the advice I had gotten from Marty Teckler. So both of those are possible, but I don't recall specifically.
Q Do you know whether or not Mr. Bowles received briefings on this matter or documents with respect to this matter after he told you he was recusing himself from it, in mid-September 1993?
A Let me see if I can take -- I don't know that I specifically remember him telling me in September of '93 that he was recusing himself. I do remember him saying that he did not particularly want

75

to be involved in the details of the case. He may or may not have used the word "recuse."

Well, I know that I only -- from that point on, the only mentions I had of the case to him were of the most general sense. They were that we were pursuing the case along the lines I have been saying, and the conversation I had with him about the call from the White House, from Neil Eggleston.

I am not aware of whether anyone else in the agency briefed him on the case outside of my presence from that point forward.

Q So the distinction, at least until he formally recused himself, was that he did not want information with respect to the details of the case, but he could receive information in a general sense with respect to the case?

A I am not trying to -- in making the distinction, maybe I am being overly careful. I believe that during this period of time, he had no involvement in the case. And he gave no directions about how the case should be handled other than to do the right thing and coordinate -- cooperate with the

76

Department of Justice.

Any information that I was aware that he received was only the most general type of information, to confirm that we, in fact, were cooperating with the Department of Justice. With the exception of the conversation I had with him about Eggleston's call. I am not -- I am not trying to make a distinction between that type of noninvolvement and recusal. He signed a recusal letter formally in 1994. I think, in essence, I had -- in essence, he had recused himself long before that, but I am not trying to draw a technical distinction here as to the meaning of the letter and whether that added something, so I don't know if I am being responsive. I am trying to be responsive, I am just --

Q For some reason, he decided to change his position from don't give me any details to a formal recusal in February or March. Did he explain to you why that changed or how that changed or what necessitated that?

A I don't think he ever explained it. I

77

think I always assumed because there was more publicity in March he decided maybe he ought to formalize it, but I don't know that I had a conversation with him.

Q More publicity about the case --

A About the overall case. And I don't now mean Capital Management, the overall Whitewater-Madison Guaranty, RTC, all the things that were starting to be written about in the newspapers. I think he decided it would be better to put it in writing.

Q Did he tell you whether or not someone suggested to him that he should formally recuse himself?

A I don't recall him saying that.

Q Did he ask you to review his letter or memorandum of recusal before he released it?

A I don't know that he released it as such. I am not sure how that actually worked. He may have shown me a copy of the letter, in which case I would have shown it to Marty Teckler.

Q After you sent these documents over to

78

Mr. Eggleston on the 16th, did you have any further conversation with him with respect to the documents?

A I think that it is possible I had one more conversation with him, and that is when he said that he was returning the documents. He had gotten a call from Mark, I seem to have a recollection -- I don't remember when -- I don't have any record of this and I don't have a specific recollection of a day and time, but I do have a recollection generally that he called me and he thought it was -- we were being overly meticulous about getting the materials back, and I said notwithstanding that, the Department of Justice had suggested we get them back and we would like them back and he said fine, he would take care of it and I told him to coordinate with Mark. I believe that's the only other conversation I had with him.

Q Did he tell you whether or not he had shared these materials with anyone else in the White House or shared them with anyone else?

A I believe he said he had not, but I don't -- I wouldn't quote him on that. That was

79

certainly my impression that he had not.
Q Did he indicate to you whether or not he had made copies of the documents and retained them?
A I believe he told me he had not. That he would return all the materials, and that he did not have copies.
Q From that point in November 1993 to the point in January when Mr. Fiske took over the investigation, did you have any further conversations with anybody at the White House with respect to Capital Management?
A Not that I recall.
Q Anyone outside your agency?
A Not that I recall.
MR. GICALE: Mark that, please.
(Spotila Exhibits 6 and 7 identified.)
MR. GICALE: I am showing you what's marked for identification first as Exhibit Number 6. This is a memorandum to Martin Teckler from Erskine's Bowles, dated March 3rd, 1994, regarding Capital Management.
MR. IVEY: Which exhibit was that?

80

MR. GICALE: Number 6.
BY MR. GICALE:
Q Can you identify this?
A It appears to be a copy of a memo from Erskine Bowles to Martin Teckler.
Q Is this the memo that you eventually saw with respect to Mr. Bowles's recusal from this matter or a copy of it?
A I think I have seen this before, yes, so it probably is.
Q And I am going to show you also what's marked for identification as Exhibit Number 7. This is a letter dated April 11th, 1994 to the Honorable Jan Meyers, U.S. House of Representatives, from Erskine Bowles. Do you recall seeing letter?
A I don't specifically recall this letter. I may very well have been given a copy of it. I don't specifically recall.
Q Do you recall whether or not Mr. Bowles did respond to an inquiry from Congresswoman Meyers with respect to his recusal from Capital Management Services?

81

A This appears to be his signature, so I am assuming this is a letter that he sent Congresswoman Meyers.
Q Do you recall any discussions about him responding to that letter at or about the time that he did indeed respond?
A I don't recall any discussions with him about it. I wouldn't -- again, I probably -- I would not have been involved with it at the time. I would have been --
Q At this point in time you had recused yourself?
A Really since -- as of late November of 1993 I really had turned the case over to Marty Teckler and Mark Stevens, so one or both of them would have perhaps had some involvement, but -- if there was a response to be made.
MR. GICALE: If I could just have one minute. I think I am almost done.
Off the record.
(Discussion off the record.)
BY MR. GICALE:

82

Q Now, when you recused from this matter in the fall of 1993, why did you do so?
A Well, after the incident in November of '93 and my conversation with the Department of Justice and the FBI agent, it occurred to me that there was too great a possibility that I could create a perception of a problem with respect to the case if I maintained even the relatively minimal involvement I had had with the case as of that point in time. I had complete confidence in Marty Teckler and Mark Stevens to handle the case, so it appeared to me to be a better course of action to just let them handle everything relating to the case.
Q That perception was based on your relationship with the President and First Lady and the allegations being made by Mr. Hale with respect to them?
A I think it was probably the totality, yes, the fact that I had a long-term relationship with the President, some lesser relationship with the First Lady, and that, yes, certainly the case was becoming more publicized. When I say "the case," I am not now

referring to Capital Management. It really had taken on a wider scope, so it appeared to me to be the better course of action. That way the case would not only be handled properly, which I was confident would be done, but have a greater perception of being handled without any political influence of any sort.

Q When Mr. Bowles told you in September of 1993 that he did not want to receive information with respect to details on the case, did he indicate to you why he did not want that kind of information?

A I think I've already mentioned that he had indicated in a general way that given his ongoing relationship with the President as an agency head and member of the National Economic Council, whatever, that he thought it would be better if he didn't have any particular involvement. And I think his letter to Chairwoman Meyers indicates pretty accurately what his position was, that he would leave direct responsibility for handling these kinds of cases to the career people, who normally are involved, to avoid even the appearance of impropriety. He wanted to reiterate that here. I think that was consistent

with -- we didn't have a long conversation about it, but it was consistent with what he said to me.

Q Did he describe any relationship he had with the President prior to being appointed to that position?

A No, you mean in that context?

Q Yes?

A No, not in that context.

MR. GICALE: I have nothing further.

MR. IVEY: Let's take a break.

(Recess.)

BY MR. GICALE:

Q Mr. Spotila, one more question.

Are you aware that the Committee has sent out a request for documents with respect to this matter to the SBA?

A Yes.

Q And have you been made aware of that request and supplied documents that you believe are relevant to that request or responsive to that request to the extent you had any in your possession and control?

85

A If I understand the question, I am aware that there is a request. I am aware that the agency has responded to the request and, to my knowledge, it has sent over what was requested. I am not aware of documents that were not supplied; is that what you are asking?

Q Do you have any records in your possession, custody or control that would be responsive to the request or have been included in the response from your agency?

A I don't have any records that I know of that are -- I may have copies of some things that were supplied, but I don't believe I have any records that were not supplied.

Q Did you review the copies -- did you supply copies of the things you had to whoever prepared the response?

A We have had -- when I say "copies," most of the -- whatever I had tended to be copies of things that Mark Stevens and Mike have given to me at some point along that period of time, in the fall of 1993. I don't have originals, as such, I would have

86

photocopies.

Q I understand.

A So I am assuming that those originals, as relevant, are all included in the response. I have not reviewed what the agency gave in response, I am assuming that everything relevant was given. I don't have any original records that would not have been --

Q Who was responsible for preparing the agency's response, was that Mr. Stevens?

A I believe Mr. Stevens and Mr. Teckler coordinated that.

Q Did you indicate to Mr. Stevens and Mr. Teckler what you had copies of so that they could --

A Yes, yes.

Q So that they could --

A They are aware and they asked if I had any additional records, and I do not, so.

Q So you have talked to them --

A They inquired of me, do we have everything and they were aware of what I had already given them and I had indicated yes, to my knowledge you have

87

everything. I think that's responsive.
MR. GICALE: I have nothing further.
MR. IVEY: Go off the record.
(Discussion off the record.)
EXAMINATION
BY MR. IVEY:
Q Good afternoon, Mr. Spotila.
A Good afternoon.
Q I have a couple of questions I want to ask you. First of all, I wanted to make sure that we had identified all the exhibits here. As I flip through my notes, I see -- I don't know that Exhibits 3 and 5 were discussed and I just wanted to know if you could take a look at them. Maybe I missed them. You could tell me what we did with them. Spotila Exhibit 3, which is a -- got a fax sheet, a news release and a three-page short memo, it looks like. Let me ask you a couple of questions about that.
First of all, do you know if those documents that are all attached together on Exhibit 3 were actually attached in that way? Were they all part of the fax?

88

A I believe so. The fax refers to five pages including the cover and there are four pages attached to it. I believe that it's exactly what was faxed over here.
Q And you faxed that over or you had someone fax that over on the same day that Exhibit 4 was sent as well?
A I believe that they were both sent the same day. I believe that Exhibit 3 was sent late morning and Exhibit 4 mid-afternoon, 3:20 it indicates. I do notice that the second fax transmission sheet refers to five pages. If you include the cover, there are six. I can't account for why that is other than maybe it was just an error.
Q Sure, but, in any event, this -- this accumulation of information, these documents here, were all sent on the same day?
A Yes.
Q Let me ask you a question about the memorandum which is in the back of Exhibit 3. It looks like it's three unnumbered pages. It has U.S. Small Business letterhead at the top and the heading

89

is "Capital Management Services, Inc. information sheet." That looks very familiar to me. Exhibit 1 seems to have a lot of the same information in it as well.

Do you know if this memorandum in Exhibit 3 was somehow produced from Exhibit 1? Was there a connection with the two documents?

A I believe that -- my recollection is that the information sheet in Exhibit 3 was primarily based on information that's also in this letter, so that --

Q And by "this letter" you are referring to Exhibit 1?

A The letter in Exhibit 1; correct. Without trying to match up the language, it was -- it was a reflection of information that could be released, the agency felt, appropriately.

Q Do you recall whether the memorandum in Exhibit 3 was released at or about the same time as the letter, Exhibit 1 here, which is the November 15th letter to Mr. LaFalce?

A The news release is dated November 16th, so

90

I don't know when on the 16th it was released, probably the morning.

The Exhibit 1 cover letter to Chairman LaFalce is dated November 15th. My recollection is that it was hand delivered to the committee late in the day on the 15th. So that this other sheet went out the next day after it had been delivered to the chairman.

Q Do you recall discussing the connection between the memorandum here in Exhibit 1, or letter in Exhibit 1, and the memorandum in Exhibit 3 with respect to Mr. Eggleston?

A I am not sure if I understand the question.

Q Was there ever any conversation that you had with Mr. Eggleston about information in Exhibit 1, the November 15th report, or letter, as being released in a public document to the press?

A The first material that I sent -- that we had sent over to Neil Eggleston, that's the morning -- what I call the morning fax, which is this press release, we indicated to him that this had

91

background information. And, in fact, it had, as you've pointed out, most if not all the information that's in the cover letter to Chairman LaFalce. So we would have let Mr. Eggleston know that this information sheet is what the agency thought could be made public, and so he got a copy of a press release. In terms of what additional information there might be in the cover letter or the attachments, as I mentioned, although I don't recall the specific conversations, he did ask for more information. We ended up giving him these, not only the cover letter, also the attachments.

Q We will come to the attachments in a moment did he ask you about the notice on the top of Exhibit 1 that mentions the Privacy Act?

A I don't believe he asked about it. I think he was aware and I mentioned to him it should be kept confidential. I don't think he specifically reacted to the Privacy Act notice.

Q Now, with respect to the Privacy Act, I take it that you are not an expert on the nuances of the Privacy Act; is that fair to say?

92

A Yes.

Q And that you had come to the job of general counsel roughly two months before these documents were sent to the White House?

A Just about precisely two months before, right.

Q And receiving a request from the White House for documents which had been provided to Congress, I take it that at the time of the request that didn't strike you as improper?

A No, it didn't.

Q And you discussed the propriety of it, at least in a general sense, with Mr. Teckler?

A Yes.

Q And Mr. Teckler is the ethics officer for SBA?

A Yes, yes, he is. And as I say the deputy general counsel. He had been acting general counsel when I got there.

Q He is an individual with considerable experience at SBA?

A Yes, he is.

93

Q And when Mr. Mackay came to talk to you, did he raise Privacy Act issues in your conversations?
A I don't believe so.
Q Did he ever express to you his belief or concern that there had been a violation of the Privacy Act in providing these documents to the White House?
A No, did he not. And, in fact, my general recollection is that I asked him whether he thought there was anything wrong with what we had done, and -- I don't mean to put words in his mouth. The impression I took away was that no, we haven't necessarily done anything wrong, but they were concerned not to create a perception problem.
Q At the time when Mr. Mackay came and spoke to you and he mentioned this problem of perception, do you know if he had had a chance to review the box, if you will -- I think you described it as the box full of documents prior to interviewing you?
A I do not recall. He may not have had a chance before the materials were made available and I

94

think he or Agent Gillis took the materials with them.
Q Did he ever express any concern about specific information being disclosed that compromised the investigation in any way?
A No. In fact, I think he had a discussion or they collectively -- "they" meaning Mackay was there and I think he had a couple of people, two other attorneys who were with him and the FBI agent who was there, and they talked to Mark Stevens about the nature of materials that were submitted since they were working on the case already they were familiar, I think, in general with the nature of the materials. They did not give any indication about anything that was done that would compromise the investigation.
Q Did you know that at the time CMS was referred to the Inspector General at the SBA, that SBA also notified Mr. Hale that there was a referral being sent to the Inspector General?
A My understanding is that that was the practice at the time. Not particularly a practice

95

that I favor, and it is not one that we do at the present time, but at the time they -- I believe that was the standard.

Q Was there any pressure on you or anyone that you are aware of at the SBA to produce the documents to the White House?

A No.

Q Are you aware of any improper uses of the documents, by the White House, that you provided to them?

A No, I am not.

Q Let me ask you about the recusal issues. You mentioned that Mr. Bowles never especially took an interest in the CMS case or had any direct involvement in the case; is that accurate? Is my recollection of your testimony accurate?

A I don't know that I would a -- I may phrase it differently. He never had any involvement in the case and I think he actively sought not to be drawn into the details surrounding the case for the reasons we discussed. He was interested in making sure that we did the right thing, that is, the case was pursued

96

properly, but he did not -- he wanted to leave it the career employees basically.

Q Essentially gave a charge of go forth and do justice, but he stayed away from the details of the investigation; he stayed away from strategic determinations about the investigation; is that fair to say?

A Yes, it is.

Q Would it be fair to describe it as a de facto recusal?

A Yes, probably.

Q Now, at the time that you recused yourself, I think you said that was around November -- sometime in November 1993?

A Right after the meeting I had with the Department of Justice and the FBI.

Q Again, your concern was similar to the concern expressed by Mr. Mackay, a concern about a perception of --

A That's right. I mean, the reality was in the prior two months I had had very little do with the case anyway, but it was clear to me that even a

minimal involvement had the potential to create a perception that there was some impropriety, and the last thing we wanted to do was to bring that about. The case was -- I felt very comfortable that the case was being handled correctly and would continue to be handled correctly. There was, in fact, no political influence or any efforts to shape how the case was being worked so I thought it was the best course of action for me to just completely step back from it.

Q Even though you didn't write a written recusal, you did inform Mr. Teckler and Mr. Stevens, that you wanted to distance yourself?

A Absolutely. In clear tones I advised Mr. Teckler that I wanted him to be in charge of the case, in the sense of -- he was the deputy general counsel, he was the number two person in our office. Mark Stevens was obviously handling the case. This was his area, so that Mark would now report to Marty Teckler for all purposes and supervision, rather than to me, on this case.

Q So, at that point, since Teckler and Stevens were the two people that had primary

responsibility for CMS anyway, a written recusal would have been only a formality at that point?

A That's right.

Q But you had no involvement in the case after that point, in any event; is that fair to say?

A Yes.

Q And after the de facto recusal, I guess we could call it, with respect to Mr. Bowles, are you aware of any involvement he had in CMS or Hale matters?

A No, I am not.

MR. IVEY: I have nothing further at this time.

EXAMINATION

BY MR. GICALE:

Q Other than possibly notifying the White House of Hale's pending indictment, and other than sending over copies of the attachments that went to Congressman LaFalce, are you aware of any other information that was conveyed to the White House -- are you aware of any other information that you conveyed to the White House with respect to Capital

99

Management or Hale?
A No, I'm not.
Let me just clarify. I am not sure that I would characterize it as notifying the White House of the indictment. As I mentioned --
Q I think the words I used were possibly notifying --
A In any event, I am not aware of anything other than those two.
Q You can explain what you mean?
A By that I mean that if I said -- I said I might have had a conversation with Melanne Verveer, who was a personal friend, and I may have mentioned to her there was an indictment she was about to read about in the newspapers. I didn't really -- I don't know that I would characterize that as notifying the White House.
Q Okay.
A The conversation with Neil Eggleston was clearly a contact that I perceived as a request from the White House, in this case the White House counsel's office, that I responded to.

100

And I don't recall any other contacts with the White House.
Q With respect to Capital Management or Hale?
A Yes.
Q Are you aware of any other instances of information being conveyed by the Small Business Administration to the White House with respect to Capital Management or Hale?
A Not that I recall. I am -- I mean, I am not aware of any. As I say, I don't recall any other instances.
MR. GICALE: I have no other questions.
MR. IVEY: Could you read back the last question and answer.
(The reporter read the record as requested.)
EXAMINATION
BY MR. IVEY:
Q Just so I am clear, the instances you are talking about of conveying information to the White House would be providing the documents during the November 16th period. Is there another instance?
A Oh, no.

101

He had asked whether I had made any mention in September to Melanne Verveer as to the fact that Hale was about to be indicted and I might have testified earlier that I might have said something, but I didn't view that as notice to the White House. Other than those -- other than that, depending on how you want to characterize that, and the Eggleston context, those were what I was referring to.

I mentioned earlier we occasionally did weekly reports and I don't know whether the chief of staff would have said something on a chief of staff's call. I am not aware of any instances of that and I am also not aware of any sensitive information that would -- I am not aware -- I don't believe that any sensitive information would or could have been passed in the course of those investigations, but -- I hate to speculate. I mean, if in a weekly report we had indicated that the receivership now had obtained records relating to Capital Management, I don't know whether that would have been passed on to someone or not. I don't consider that sensitive. That's a factual statement. I would not have been producing

102

that, nor am I aware of it being transmitted.

Q Now, at the time that you spoke with Ms. Verveer, is it fair to say that your knowledge of the investigation of CMS was a bit sketchy?

A It is completely minimal.

Q So the conversation that you could have had with her at best would not have conveyed any substance relevant to the investigation?

A That's correct.

MR. IVEY: No further questions.

EXAMINATION

BY MR. GICALE:

Q Just one question with respect to the weekly reports.

Does your office retain or somebody in your department retain copies of those weekly reports for that time period?

A I don't know the answer to that. I know -- they are sent typically to the office of the administrator and I can certainly inquire and see if reports exist and, if so, review them.

Q Could you do that?

A Sure.
Q Could you determine whether or not they exist for the time period from -- well, from 1993, all of 1993 -- from January 1993 through at least February 1994 -- can we go off the record.
(Discussion off the record.)
MR. GICALE: To January 1994, to the extent that those reports contained information with respect to Capital Management and Hale.
THE WITNESS: Yes, I will see if, A, we have copies and, if so, we will review them and let you know one way or another whether we have any references or we don't. Is that what you would like?
BY MR. GICALE:
Q Yes. These reports are forwarded to the White House, I take it?
A No, these reports are usually forwarded to the deputy administrator and the administrator, but the chief of staff has access to them so I don't know whether material might be drawn -- I believe in every agency the chief of staff makes periodic reports to

the White House, informational reports as to what's being done. I don't see those reports. I am speculating.
Q To the extent that there are written reports?
A I will check and see if there are any.
Q From the chief of staff to the White House?
A I will see to it.
Q Search your agency's records.
A What I will do is have Mark Stevens probably conduct that search, but I will see to it that he has full access.
MR. GICALE: Thank you. And if possible, do it before the end of the week.
THE WITNESS: We will do it, probably, tomorrow.
(Whereupon, at 3:34 p.m., the deposition was concluded.)

JOHN T. SPOTILA

CERTIFICATE OF NOTARY PUBLIC & REPORTER 105

I, JOANNE LIVERANI , the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Joanne Liverani

Notary Public in and for the
District of Columbia

My Commission Expires JULY 31, 2000

DEPONENT: J. Spotila

ERRATA

PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
7	15	SEPT 16	SEPT 15	CORRECTED DATE
17	17-18	16/16th	15/15th	"
18	3	16	15	"
20	22	after	before	TRANSCRIPTION ERROR (CT/E)
24	19	liquidating	litigating	T/E
THROUGHOUT		BROSTEN STEVENS STANDISH	BROSTEN STEPHENS STANGER	spelling
29	21	IS	WAS	T/E
48	11	receivership.	Receivership complaint.	T/E
62	6	of	— (delete it)	T/E
63	12	"hand delivered it"	"Hand delivered." It	T/E
66	8 12	his we had told	these I had told	T/E
67	10	in	and	T/E
69	17 10	in the	15 a	corrected date T/E
95	20	MIKE	MARTY	T/E
93	9	did he	he did	T/E
94	11	submitted since	submitted. Since	T/E
102	5	IS	WAS	T/E

Stephens Ex 14
FOR ID
JR 10-30-95

Spotila Ex 1
FOR ID
JR 11-6-95

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

FICE OF THE ADMINISTRATOR

NOTICE

The information contained herein has been determined to be confidential in nature and therefore not releasable to unauthorized parties. Disclosure of this information may violate Federal law (e.g., Privacy Act of 1974, the Right to Financial Privacy Act of 1978, and 18 U.S.C. § 1905). Utmost discretion should be exercised.

DEPOSITION EXHIBIT
Teckler 2
11-17-95 PL

November 15, 1993

Honorable John J. LaFalce
Chairman, Committee on Small Business
Congress of the United States
House of Representatives
Washington, DC 20515-6315

Re: Capital Management Services, Inc.

Dear Chairman LaFalce:

I am pleased to provide the information you requested on November 4, 1993, regarding Capital Management Services, Inc. ("Capital Management"), a Specialized Small Business Investment Company ("SSBIC") located in Little Rock, Arkansas.

As general background, Capital Management was licensed by the Small Business Administration ("SBA") in 1979, and received total financial assistance of $3.4 million from SBA during the period from September, 1983 through March, 1989. While monitoring Capital Management in the fall of 1992 in connection with a request for additional leverage, SBA began to suspect regulatory violations by the SSBIC. SBA required Capital Management to provide further information about its portfolio of investments, and then in October, 1992 and December, 1992, SBA denied Capital Management's requests for the additional financing.

In the review process, SBA became aware of serious potential regulatory problems relating to Capital Management. Accordingly, SBA commenced an audit of the SSBIC for the 24 month period ending ...ber 30, 1992. As a result of the audit report, issued in

March of 1993, SBA referred the case to the Office of Inspector General ("IG") for investigation. The IG, in turn, made a referral to the Federal Bureau of Investigation ("FBI") for further inquiry. SBA officials traveled to Arkansas and met with the FBI and the local Assistant United States Attorney in order to review the records of Capital Management. This joint effort uncovered additional regulatory violations by Capital Management. SBA then moved for and obtained appointment as receiver ("Receiver") for Capital Management pursuant to an Order entered by the United States District Court for the Eastern District of Arkansas, Western Division, on September 15, 1993. (United States of America v. Capital Management Services, Inc., Civil Action No. LR-C-93-646 (Eisele, J.))

The Receivership was instituted for the purpose of administering and controlling Capital Management, making inquiry into regulatory compliance, liquidating all of Capital Management's assets, satisfying the claims of creditors therefrom, and pursuing all causes of action available to Capital Management against third parties. SBA is authorized to act as a receiver of an SSBIC under Section 311 of the Small Business Investment Act of 1958, as amended ("Act"), 15 U.S.C. § 687c.

The following is a point by point response to the specific inquiries in your letter:

SSBIC License

Capital Management was issued an SSBIC license by SBA on March 14, 1979 under Section 301(d) of the Act, 15 U.S.C. § 681(d). SSBICs licensed under Section 301(d) of the Act are permitted to fund only those concerns owned by socially or economically disadvantaged persons.

Ownership

According to SBA's files, Capital Management is currently owned by David L. Hale 82%, Linda Sue Hale (David Hale's wife) 9% and Hazel Dennis (David Hale's sister) 9%.

Private Capital

As required by Section 302 of the Act, 15 U.S.C. § 682, Capital Management was initially capitalized with $152,500 in "Private Capital", as defined in SBA's regulations ("Regulations") at 13 C.F.R. § 107.3. Please note that the minimum requirement for "Private Capital" has been amended since the time Capital

Management was licensed. Subsequently, Capital Management's private paid-in capital increased to $500,500 in March of 1980, to $1,006,310 in June of 1986 and to $1,406,310 in December of 1988.

SBA Leverage

The total amount of SBA financial assistance provided to Capital Management to date is $3.4 million. In accordance with Section 303(b) of the Act, 15 U.S.C. § 683(b), SBA provided financing to Capital Management through the purchase or guarantee of three subordinated debentures issued by Capital Management in the total principal amount of $2,000,000. The three financings were made in November, 1983; September, 1986; and March, 1989. The SBA also provided financing to Capital Management through the purchase of a total face amount of $1,400,000 in preferred stock issued by the Company in three separate financings in March, 1980; May, 1986; and March, 1989. The SBA is authorized to purchase preferred securities of SSBICs pursuant to Section 303(c) of the Act, 15 U.S.C. § 683(c).

Portfolio Financings

You have requested details regarding Capital Management's financings to individual small business concerns. These SBIC financings were not SBA approved investments, since SBA does not select or approve small businesses which SBICs choose to finance. Individual financing decisions are made by the SBICs, without prior consultation with SBA. We are not in a position at this time to give you details about individual financings by Capital Management.

As Receiver, SBA is marshalling all of Capital Management's assets and property and gathering and reviewing all of its documents, books, records and files. Since its appointment as Receiver, SBA has been operating pursuant to a liquidation directive. New financings are not being made by Capital Management. The Receiver has retained a Principal Agent, Cecilia R. Seay, who is experienced in SBIC liquidation, has served as an agent for other receiverships, has interviewed and deposed numerous individuals, and has general awareness of SBIC regulations and corporate duties in the State of Arkansas. We are in the process of retaining accountants to follow the flow of funds from Capital Management. All of Capital Management's individual financings are being reviewed, with more information being obtained daily. Once the information is available, we will review it to assess what details we can make available to you.

As additional background, I am attaching further information relating to Capital Management. If you like, SBA representatives

can meet at a mutually convenient time with Tom Powers, Jeanne Roslanowick, or any other of your designated representatives to clarify this information.

I look forward to working closely with you and the Small Business Committee as we proceed.

Sincerely,

Erskine B. Bowles
Administrator

Attachments

EBB/s

November 10, 1993

John T. Spotila, Esq.
General Counsel
U.S. Small Business Administration
Washington, D.C. 20416

Dear John:

Enclosed please find the attachments to the public report from Administrator Bowles to Chairman LaFalce, House Committee on Small Business, that the Small Business Administration provided earlier this week. In view of the fact that the attachments themselves, although delivered to the House committee, were not made public, I am returning them.

Very truly yours,

W. Neil Eggleston
Associate Counsel to the President
(202) 456-7901

U.S. SMALL BUSINESS ADMINISTRATION

Spotila Ex 3
For ID
gdl 11-6-95

FAX TRANSMISSION SHEET

Date: 11/16/93 Time: 11:20 am

WARNINGS: PROTECTED UNDER THE PRIVACY ACT, 5 U.S.C., 552a. Unauthorized Disclosure Prohibited Under Penalty of Law. If Recipient Is Not As Identified On Cover Sheet, Make No Further Disclosure And Telephone Transmitter For Instructions On Return Of Materials.

Be Aware Fax Machines Using Thermal Paper Produce An Unstable Image Which Will Deteriorate. Copy Messages Onto Plain Paper Prior To Filing As A Record!!

YOU MUST FILL IN ALL FIELDS

SUBJECT: Capital Management Services Total Pages + Cover = 5

	Person's Full Name	Office, Firm	FAX Number	Voice Number
TO:	Neil Eggleston, Esq. Associate Counsel	Ofc of the White House Counsel	(202)-456-1047	(202) 456-790,
FROM:	John T. Spotila, General Counsel/SBA	SBA/OGC	(202) 205-6846	(202) 205-6713

Optional Message:

ATTENTION RECEIVING PARTIES

Immediately call CHECK at (202) 205-6713 if any FAX transmission is incomplete or if multiple copies are received.

☐ Check this box if you would like the receiving office to confirm receipt of this Fax Transmission.

When checked the receiving office should fax only this cover sheet back to the transmitting office confirming receipt.

Receiving Office, Firm or Division: _____

Received by: _____ Receipt Date: _____

Receipt Time: _____

SBA Form 959 (8-93) Previous Editions Obsolete. This form replaces CO 959.

EXHIBIT

SBA
U.S. Small Business Administration

NEWS RELEASE

SBA Number:
For release: November 16, 1993

For more information, contact: Mike Stamler (202)205-6740

STATEMENT ON CAPITAL MANAGEMENT SERVICES INC.

U.S. Small Business Administration (SBA) Administrator Erskine Bowles today released the attached summary of his letter to U.S. Rep. John LaFalce, chairman of the House Committee on Small Business. Chairman LaFalce had asked for background information on Capital Management Services Inc., a Specialized Small Business Investment Company located in Little Rock, Ark.

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

Capital Management Services, Inc.
Information Sheet

Capital Management Services, Inc. ("Capital Management"), was a Specialized Small Business Investment Company ("SSBIC") located in Little Rock, Arkansas.

Capital Management was licensed by the Small Business Administration ("SBA") in 1979, and received total financial assistance of $3.4 million from SBA during the period from September, 1983 through March, 1989. While monitoring Capital Management in the fall of 1992 in connection with a request for additional leverage, SBA began to suspect regulatory violations by the SSBIC. SBA required Capital Management to provide further information about its portfolio of investments, and then in October, 1992 and December, 1992, SBA denied Capital Management's requests for the additional financing.

In the review process, SBA became aware of serious potential regulatory problems relating to Capital Management. Accordingly, SBA commenced an audit of the SSBIC for the 24 month period ending November 30, 1992. As a result of the audit report, issued in March of 1993, SBA referred the case to the Office of Inspector General ("IG") for investigation. The IG, in turn, made a referral to the Federal Bureau of Investigation ("FBI") for further inquiry. SBA officials traveled to Arkansas and met with the FBI and the local Assistant United States Attorney in order to review the records of Capital Management. This joint effort uncovered additional regulatory violations by Capital Management. SBA then moved for and obtained appointment as receiver ("Receiver") for Capital Management pursuant to an Order entered by the United States District Court for the Eastern District of Arkansas, Western Division, on September 15, 1993. (United States of America v. Capital Management Services, Inc., Civil Action No. LR-C-93-646 (Eisele, J.))

The Receivership was instituted for the purpose of administering and controlling Capital Management, making inquiry into regulatory compliance, liquidating all of Capital Management's assets, satisfying the claims of creditors therefrom, and pursuing all causes of action available to Capital Management against third parties. SBA is authorized to act as a receiver of an SSBIC under Section 311 of the Small Business Investment Act of 1958, as amended ("Act"), 15 U.S.C. § 687c.

The following is point by point specific background material:

SSBIC License

Capital Management was issued an SSBIC license by SBA on March 14, 1979 under Section 301(d) of the Act, 15 U.S.C. § 681(d). SSBICs licensed under Section 301(d) of the Act are permitted to fund only those concerns owned by socially or economically disadvantaged persons.

Management

According to SBA's files, Capital Management was operated by David L. Hale, a local Pulaski Municipal Court Judge, since 1980.

Private Capital

As required by Section 302 of the Act, 15 U.S.C. § 682, Capital Management was initially capitalized with $152,500 in "Private Capital", as defined in SBA's regulations ("Regulations") at 13 C.F.R. § 107.3. Please note that the minimum requirement for "Private Capital" has been amended since the time Capital Management was licensed. Subsequently, Capital Management's private paid-in capital increased to $500,500 in March of 1980, to $1,006,310 in June of 1986 and to $1,406,310 in December of 1988.

SBA Leverage

The total amount of SBA financial assistance provided to Capital Management to date is $3.4 million. In accordance with Section 303(b) of the Act, 15 U.S.C. § 683(b), SBA provided financing to Capital Management through the purchase or guarantee of three subordinated debentures issued by Capital Management in the total principal amount of $2,000,000. The three financings were made in November, 1983; September, 1986; and March, 1989. The SBA also provided financing to Capital Management through the purchase of a total face amount of $1,400,000 in preferred stock issued by the Company in three separate financings in March, 1980; May, 1986; and March, 1989. The SBA is authorized to purchase preferred securities of SSBICs pursuant to Section 303(c) of the Act, 15 U.S.C. § 683(c).

Portfolio Financings

Capital Management made numerous financings to individual small business concerns. These SBIC financings were not SBA approved investments, since SBA does not select or approve small businesses which SBICs choose to finance. Individual financing decisions are made by the SBICs, without prior consultation with SBA. SBA is not in a position at this time to give details about individual financings by Capital Management.

As Receiver, SBA is marshalling all of Capital Management's assets and property and gathering and reviewing all of its documents, books, records and files. Since its appointment as Receiver, SBA has been operating pursuant to a liquidation directive. All of Capital Management's individual financings are being reviewed, with more information being obtained daily.

U.S. SMALL BUSINESS ADMINISTRATION

Spotila Ex 4
FOIA
dtd 11-6-95

FAX TRANSMISSION SHEET

Date: 11-16-93 Time: 3:20 P.M.

WARNINGS: PROTECTED UNDER THE PRIVACY ACT, 5 U.S.C., 552a. Unauthorized Disclosure Prohibited Under Penalty of Law. If Recipient Is Not As Identified On Cover Sheet, Make No Further Disclosure And Telephone Transmitter For Instructions On Return Of Materials.

Be Aware Fax Machines Using Thermal Paper Produce An Unstable Image Which Will Deteriorate. Copy Messages Onto Plain Paper Prior To Filing As A Record!!

YOU MUST FILL IN ALL FIELDS

SUBJECT: CAPITAL MANAGEMENT Total Pages + Cover = 5

	Person's Full Name	Office, Firm	FAX Number	Voice Number
TO:	NEIL EGGLESTON, ESQ	OFFICE OF WHITE HOUSE COUNSEL	202-456-1647	202-456-74
FROM:	JOHN T. SPOTILA, ESQ	S.B.A.	202-205-6946	202-205-671

Optional Message:

ATTENTION RECEIVING PARTIES

Immediately call CHERYL at 205-6713 If any FAX transmission is incomplete or if multiple copies are received.

☐ Check this box if you would like the receiving office to confirm receipt of this Fax Transmission.

When checked the receiving office should fax only this cover sheet back to the transmitting office confirming receipt.

Receiving Office, Firm or Division: _____

Received by: _____ Receipt Date: _____

Receipt Time: _____

EXHIBIT 95-1548 Doc 2 Pg 1 of 2 CK 11/29/95

SBA Form 959 (8-93) Previous Editions Obsolete. This form replaces CO 959.

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416
(202) 205-6642

General Counsel

November 16, 1993

HAND DELIVERED

Neil Eggleston, Esquire
Associate Counsel
Office of the White House Counsel
The White House
Washington, DC 20416

Dear Neil:

Enclosed is a copy of Erskine's letter yesterday to Chairman LaFalce (with confidential attachments).

Sincerely,

John T. Spotila

JTS/s

Attachments

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

NOTICE

The information contained herein has been determined to be confidential in nature and therefore not releasable to unauthorized parties. Disclosure of this information may violate Federal law (e.g., Privacy Act of 1974, the Right to Financial Privacy Act of 1978, and 18 U.S.C. § 1905). Utmost discretion should be exercised.

November 15, 1993

Honorable John J. LaFalce
Chairman, Committee on Small Business
Congress of the United States
House of Representatives
Washington, DC 20515-6315

Re: Capital Management Services, Inc.

Dear Chairman LaFalce:

I am pleased to provide the information you requested on November 4, 1993, regarding Capital Management Services, Inc. ("Capital Management"), a Specialized Small Business Investment Company ("SSBIC") located in Little Rock, Arkansas.

As general background, Capital Management was licensed by the Small Business Administration ("SBA") in 1979, and received total financial assistance of $3.4 million from SBA during the period from September, 1983 through March, 1989. While monitoring Capital Management in the fall of 1992 in connection with a request for additional leverage, SBA began to suspect regulatory violations by the SSBIC. SBA required Capital Management to provide further information about its portfolio of investments, and then in October, 1992 and December, 1992, SBA denied Capital Management's requests for the additional financing.

In the review process, SBA became aware of serious potential regulatory problems relating to Capital Management. Accordingly, SBA commenced an audit of the SSBIC for the 24 month period ending November 30, 1992. As a result of the audit report, issued in

March of 1993, SBA referred the case to the Office of Inspector General ("IG") for investigation. The IG, in turn, made a referral to the Federal Bureau of Investigation ("FBI") for further inquiry. SBA officials traveled to Arkansas and met with the FBI and the local Assistant United States Attorney in order to review the records of Capital Management. This joint effort uncovered additional regulatory violations by Capital Management. SBA then moved for and obtained appointment as receiver ("Receiver") for Capital Management pursuant to an Order entered by the United States District Court for the Eastern District of Arkansas, Western Division, on September 15, 1993. (United States of America v. Capital Management Services, Inc., Civil Action No. LR-C-93-646 (Eisele, J.))

The Receivership was instituted for the purpose of administering and controlling Capital Management, making inquiry into regulatory compliance, liquidating all of Capital Management's assets, satisfying the claims of creditors therefrom, and pursuing all causes of action available to Capital Management against third parties. SBA is authorized to act as a receiver of an SSBIC under Section 311 of the Small Business Investment Act of 1958, as amended ("Act"), 15 U.S.C. § 687c.

The following is a point by point response to the specific inquiries in your letter:

SSBIC License

Capital Management was issued an SSBIC license by SBA on March 14, 1979 under Section 301(d) of the Act, 15 U.S.C. § 681(d). SSBICs licensed under Section 301(d) of the Act are permitted to fund only those concerns owned by socially or economically disadvantaged persons.

Ownership

According to SBA's files, Capital Management is currently owned by David L. Hale 82%, Linda Sue Hale (David Hale's wife) 9% and Hazel Dennis (David Hale's sister) 9%.

Private Capital

As required by Section 302 of the Act, 15 U.S.C. § 682, Capital Management was initially capitalized with $152,500 in "Private Capital", as defined in SBA's regulations ("Regulations") at 13 C.F.R. § 107.3. Please note that the minimum requirement for "Private Capital" has been amended since the time Capital

Management was licensed. Subsequently, Capital Management's private paid-in capital increased to $500,500 in March of 1980, to $1,006,310 in June of 1986 and to $1,406,310 in December of 1988.

SBA Leverage

The total amount of SBA financial assistance provided to Capital Management to date is $3.4 million. In accordance with Section 303(b) of the Act, 15 U.S.C. § 683(b), SBA provided financing to Capital Management through the purchase or guarantee of three subordinated debentures issued by Capital Management in the total principal amount of $2,000,000. The three financings were made in November, 1983; September, 1986; and March, 1989. The SBA also provided financing to Capital Management through the purchase of a total face amount of $1,400,000 in preferred stock issued by the Company in three separate financings in March, 1980; May, 1986; and March, 1989. The SBA is authorized to purchase preferred securities of SSBICs pursuant to Section 303(c) of the Act, 15 U.S.C. § 683(c).

Portfolio Financings

You have requested details regarding Capital Management's financings to individual small business concerns. These SBIC financings were not SBA approved investments, since SBA does not select or approve small businesses which SBICs choose to finance. Individual financing decisions are made by the SBICs, without prior consultation with SBA. We are not in a position at this time to give you details about individual financings by Capital Management.

As Receiver, SBA is marshalling all of Capital Management's assets and property and gathering and reviewing all of its documents, books, records and files. Since its appointment as Receiver, SBA has been operating pursuant to a liquidation directive. New financings are not being made by Capital Management. The Receiver has retained a Principal Agent, Cecilia R. Seay, who is experienced in SBIC liquidation, has served as an agent for other receiverships, has interviewed and deposed numerous individuals, and has general awareness of SBIC regulations and corporate duties in the State of Arkansas. We are in the process of retaining accountants to follow the flow of funds from Capital Management. All of Capital Management's individual financings are being reviewed, with more information being obtained daily. Once the information is available, we will review it to assess what details we can make available to you.

As additional background, I am attaching further information relating to Capital Management. If you like, SBA representatives

can meet at a mutually convenient time with Tom Powers, Jeanne Roslanowick, or any other of your designated representatives to clarify this information.

I look forward to working closely with you and the Small Business Committee as we proceed.

Sincerely,

Erskine B. Bowles
Administrator

Attachments

EBB/s

Spotila Ex 5
For ID
JR 11-6-95

THE WHITE HOUSE
WASHINGTON

November 20, 1993

John T. Spotila, Esq.
General Counsel
U.S. Small Business Administration
Washington, D.C. 20416

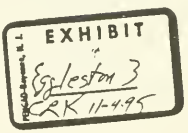
Dear John:

Enclosed please find the attachments to the public report from Administrator Bowles to Chairman LaFalce, House Committee on Small Business, that the Small Business Administration provided earlier this week. In view of the fact that the attachments themselves, although delivered to the House committee, were not made public, I am returning them.

Very truly yours,

W. Neil Eggleston

W. Neil Eggleston
Associate Counsel to the President
(202) 456-7901

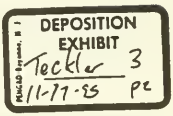


Spotila Ex 6
For ID
JH 11-6-95



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR



MEMORANDUM

TO: Martin Teckler

FROM: Erskine Bowles

DATE: March 3, 1994

SUBJECT: Capital Management Co.

I am recusing myself from all involvement in the SBA's ongoing investigation into Capital Management.

My instructions to you and others since this investigation began still stand. These instructions are:

1. Undertake the Capital Management investigation in the same vigorous manner you would any other investigation of an SSBIC. If you find any evidence of fraud or abuse, you should take every appropriate step to prosecute the person or persons who have perpetrated this malfeasance; and

2. The SBA should provide Chairman LaFalce with any relevant information that he requests. This information should be provided as soon as possible after the request is received.

AD 940328019 F-MEYERS

U S Small Business Administration
Washington D C 20416

OFFICE OF THE ADMINISTRATOR

April 11, 1994

Honorable Jan Meyers
U.S. House of Representatives
Washington, D.C. 20515

Dear Congresswoman Meyers:

This is in response to your March 23, 1994 inquiry regarding my recusal from involvement in the Capital Management Services matter.

Throughout my tenure as Administrator of the Small Business Administration direct responsibility for the handling of all aspects of the investigation of and prosecution of any SBIC or SSBIC suspected of wrongdoing have been delegated to the career Investment Division and Office of General Counsel personnel who normally are involved in such cases. Capital Management has been treated in the same manner as all such other cases. I have never reviewed the Capital Management file.

It has been my practice at the SBA to recuse myself from any situation where there could be asserted even the remotest hint of a conflict of interest or perception of impropriety. To avoid even the appearance of impropriety, I verbally advised my staff in the late fall of 1993 that I intended to separate myself, even more thoroughly than an Administrator normally would be in an SBIC legal matter, from all aspects of the Capital Management matter. At the same time, I firmly instructed each of the staff that they were to pursue the investigation and prosecution of this matter vigorously, and that they were to cooperate fully, completely and quickly with any governmental agency investigating or prosecuting this matter.

On March 3, 1994 I memorialized my prior recusal in a memorandum to our Deputy General Counsel, who is our ethics officer as well as the career staff member who has been supervising our management of the Capital Management case from a legal perspective. I previously have provided a copy of that memorandum to the staff of the House Small Business Committee. A copy is attached to this letter for your information.

Very truly yours,

Erskine B. Bowles
Administrator

Attachment

Printed on recycled paper

DEPOSITION OF SHARON E. CONAWAY
IN RE: S. RES. 120

TUESDAY, NOVEMBER 7, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of SHARON E. CONAWAY, called for examination pursuant to notice of deposition, at 6:15 p.m. in the law offices of Wilmer, Cutler & Pickering, 2445 M. Street, NW, before BRENDA M. SMONSKEY, a Notary Public within and for the District of Columbia, when were present:

MICHAEL P. O'CALLAGHAN, ESQ.
Majority Associate Special Counsel
ANDREW M. SCHAUER, ESQ.
Minority Assistant Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

ROGER M. WITTEN, ESQ.
GAIL BERNSTEIN, ESQ.
STEVEN H. SACHS, ESQ.
Wilmer, Cutler & Pickering
2445 M. Street, NW
Washington, DC 20036–1420
On behalf of the Deponent.

CONTENTS

WITNESS	EXAMINATION
Sharon E. Conaway	
by Mr. O'Callaghan	3
by Mr. Schauer	68
by Mr. O'Callaghan	71
Errata	7416

3

PROCEEDINGS

Whereupon,

SHARON E. CONAWAY

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. O'CALLAGHAN:

Q Good evening. My name is Michael O'Callaghan. I am associate and special counsel for the majority on the Special Committee. This deposition is being conducted pursuant to Senate Resolution 120. The resolution establishes a Special Committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, Capital Management Services, Incorporated, the Arkansas Development Finance Authority and other related matters.

Section 1(b)(2)(e) of Senate Resolution 120 authorizes investigation and public hearings into whether the report issued by the Office of Government Ethics on July 31, 1994 or related transcripts of

4

deposition testimony, one, were improperly released to White House officials or others prior to their testimony before the Committee on Banking, Housing and Urban Affairs pursuant to Senate Resolution 229 or, two, were used to communicate to White House officials or to others confidential RTC information relating to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation.

That section of the resolution will be the main focus of this evening's deposition.

This deposition is being taken actually while public hearings are taking place. The first one was started today. The hearings on this issue will likely continue on through part of this week. There may be a possibility that you will be asked to testify at the hearings. If that does happen, we will notify your counsel and let you know.

Today we are going to -- we will be asking you a series of questions. You have already been sworn in. You are testifying under oath. If you don't understand a question, please let either one of us know and we will be happy to rephrase the question

5

for you. If you need a break also let us know and with RTC we will be glad to accommodate you.

The stenographer is preparing a record of questions and answers. The deposition will be treated as committee confidential until the commencement of the hearings, and we also request that you keep the contents of the deposition confidential.

Prior to the hearings, if you are asked to testify, we will be happy to provide you with a copy of the transcripts along with an errata sheet so you can make any corrections and as soon as the deposition is available we will be happy to provide you with a copy to put in corrections as you see fit.

Are you represented by counsel this evening?

A Yes.

MR. WITTEN: I have a couple things to say. First, I will put on the record that we appreciate the willingness of both the Majority and Minority staff to accommodate us by holding the

6

deposition here in view of the fact that Ms. Conaway is very pregnant and we are very close to her hospital. We want to thank you both for doing that.

Secondly, as we said in the beginning of the other depositions, we don't represent the White House but we are aware there have been discussions between the Committee and the White House concerning the scope of any privileges that might be asserted by the White House. We think we have a general idea what those are but we are not qualified to be policemen of that privilege and Ms. Conaway is not authorized by the White House to waive any privilege or expand on any waiver. Anything she says should not be construed as a waiver by the White House.

Third, you said this transcript would remain confidential until the hearings have begun and as you know the hearings have begun. We would object to any release of any portion of this transcript by the Committee or its staff before Ms. Conaway has a chance to review it and correct it.

MR. O'CALLAGHAN: Certainly. We would not consider doing that.

7

BY MR. O'CALLAGHAN:
Q In addition, this evening, objections to the form of questions will be noted for the record. Counsel may object on grounds of privilege or relevance. The Committee Chairman may rule on objections where the witness refuses to answer a question.
Could you please state and spell your full name for the record?
A My name is Sharon, S-h-a-r-o-n, Elizabeth, Conaway, C-o-n-a-w-a-y.

Q Are you aware of the Committee's document request to the White House?
A Not specifically.
Q Did you conduct any searches in connection with document productions to the Committee?
A No.
Q Do you know whether all responsive documents to the Committee's document requests have been produced by the White House?

8

A I don't know.
Q Have you spoken to anyone other than your counsel prior to this deposition about this deposition?
A No.
Q Have you spoken to any other witnesses who have been deposed in this inquiry?
A I spoke briefly to Mr. Cutler this afternoon.
Q Did you discuss the contents of his testimony?
A No.
Q Did you conduct any preparation for this evening's deposition?
A Only in connection with my counsel.
Q The question was meant to elicit whether you reviewed any documents or tried to refresh your recollection by talking to any other witnesses.
A I reviewed certain documents.
Q What documents did you review?
MR. WITTEN: Don't answer that question. The selection of documents was made by counsel, and

it is privileged.
MR. O'CALLAGHAN: Are these documents that were produced to the Committee?
MR. WITTEN: I'm not going to answer that; privilege. And she doesn't know.
MR. O'CALLAGHAN: Could you for the record state the basis for the claim.
MR. WITTEN: Attorney-client work product.
BY MR. O'CALLAGHAN:
Q What is your present business address?
A It is 2430 E Street, Northwest in Washington.
Q Who is your current employer?
A The U.S. Department of State.
Q What is your position there?
A Attorney-adviser, with an E.
Q How long have you been in that position?
A I started that position April 19, 1994. I left June of '94 to go to the White House. I returned to the State Department in September of '94. I have been there since then.
Q Could you give me a brief description of

your employment history since you graduated from law school.
A Yes. I came to work for Wilmer, Cutler & Pickering in September of 1988. I worked here until April 1, 1994, and that same month I went to the State Department. You know the rest.
Q You said you went over to the White House in I believe it was June of 1994?
A Right. I believe I started June -- around June 18, '94.
Q What was your position when you went over to the White House?
A I had the title of special assistant counsel.
Q Were you in a specific office of the White House?
A You mean did I have a specific room that I worked out of?
Q No. Rather, departmental section or organization.
A I was a special assistant counsel within the Office of White House Counsel working under Lloyd

11

Cutler.
Q Who did you report to while you were there?
A I reported to Jane Sherburne, immediately to Jane Sherburne and Sheila Cheston. I suppose ultimately I reported to Mr. Cutler.
Q What were their respective positions?
A They were each special associate counsel then.
Q And Mr. Cutler's position?
A He was counsel to the President.
MR. WITTEN: I think he was special counsel.
THE WITNESS: Okay.
BY MR. O'CALLAGHAN:
Q During the time since you started at the White House in June of 1994, you said it was around June 18th, you thought, through August 5th, what were your primary responsibilities?
A Let me correct something. I was there until September 3rd, I think, or September 2nd.
Q I'm putting you within a specific time period.

12

A Generally I was brought in to help with the investigation that Mr. Cutler was conducting and with preparing his hearing testimony. Generally I did a series of research assignments, legal research, factual research. I helped prepare drafts of his testimony, the factual report that went with it.
Q You said you -- you referred to an investigation that was being conducted. What was the investigation looking at?
A That was Mr. Cutler's investigation of the contacts between White House and Treasury officials concerning matters related to Madison Guaranty.
Q I meant to ask you this earlier, but when did you graduate from law school?
A In 1988, May '88.
Q During this time period, were you aware that there was an investigation also being conducted into White House-Treasury contacts by the Inspector General's office of both the Treasury and the Resolution Trust Corporation?
A Yes --
MR. WITTEN: I'm going to object to the

13

form of the question. You can answer as it has been posed.

THE WITNESS: Generally, yes.

BY MR. O'CALLAGHAN:

Q What was your understanding of the investigation that was being conducted?

A I don't think it was much more specific than what you just said.

Q How did you become aware that they were conducting an investigation?

A When I came to work at the White House, Jane and Sheila briefed me in general on the situation. I expect they told me that.

Q Do you recall specifically what they told you about it?

A No.

Q Was it in the context of a larger briefing, or was that a specific briefing on that investigation?

A It would have been in the context of a larger briefing.

Q Did you have any contact with anyone from

14

the Treasury Inspector General's office during the time period when you started, June 18th, 1994 through August 5th, 1994?

A I don't believe I did.

Q Did you have any contact with anyone in the Office of General Counsel at Treasury during that time period as they were helping to prepare Secretary Bentsen for testimony on this issue?

A I had I think more than one conversation with someone in the General Counsel's Office, but not in relation to their preparation of Mr. Bentsen specifically.

Q Who is the person you had a conversation with at General Counsel's Office?

A The only person I recall speaking to there was named David Dougherty.

Q When did that conversation take place?

A I don't remember when my first conversation with him took place. As I said, I think I had more than one.

Q You had several?

A I don't know if it was as many as several,

15

but it was more than one. I know that I did have a series of conversations with him I believe on July 27.

Q Did your office ever come into possession of any documents that were produced during the course of the IG's investigation?

A I'm not sure. I'm not sure I understand the question, actually.

Q Let me rephrase it. Did the White House counsel's office ever come into the possession of documents ever produced in connection with the investigation being conducted by the two IG offices?

A By produced, do you mean created?

Q Created, yes.

A I know that the White House received certain documents that Treasury had produced to one or both of the Congressional committees, and I know that the White House came into possession of transcripts of depositions conducted by the Treasury IG.

Q What is your knowledge of how the transcripts came to come into the possession of the

16

White House?

A I know the White House obtained Treasury IG transcripts from two sources. They obtained transcripts of, I believe some of the depositions of White House staff from counsel for the staff members.

MR. WITTEN: Private counsel?

THE WITNESS: Private counsel, yes. They also obtained Jean Hanson's transcript. I'm not sure where it got that one. And it also obtained transcripts of White House, Treasury and RTC employees' depositions from Treasury.

BY MR. O'CALLAGHAN:

Q With regard to the transcripts that the White House received from private counsel, when did the White House receive those?

A I don't have -- I recall that it received them sometime before July 23rd. I don't have an independent recollection of exactly when. My memory has recently been refreshed that I believe it was around July 21st and 22nd. Whether we got some before then I don't know.

17

Q Who were they delivered to?
A I believe that at least some of them were delivered to Sean Johnston, who was a paralegal on our team, our investigation team.
MR. WITTEN: Question was who were they delivered to. Which is the they we are talking about?
MR. O'CALLAGHAN: The ones we were just referencing, the ones from private counsel.
BY MR. O'CALLAGHAN:
Q If I make a distinction -- I will ask separately about each group.
Were the transcripts that were provided by private counsel, have they been requested by the White House to receive them from private counsel, or had they been offered by private counsel?
A I don't know.
Q Have you ever learned or been told?
A No.
Q Did you come into possession of any of the transcripts that were provided by private counsel in July of '94?

18

A Yes.
Q When did you come into possession of those transcripts?
A I don't specifically recall except that it was before July 23rd.
Q Why do you believe it was before July 23rd?
A Because I reviewed them, I read them in connection with preparing Mr. Cutler's report, and I know I read them and reviewed them before we received transcripts from Treasury, which was on July 23rd.
Q Who else reviewed those transcripts?
A I don't know if anyone else reviewed them.
Q Do you know that you are the only person that reviewed them?
A To my knowledge, I am.
Q Did Sean Johnston deliver them to you directly?
A Again, we are talking about which transcripts?
Q The ones we were just discussing, the ones from private counsel.
A I don't remember specifically how I got

them.
Q Was there anyone else in possession of them?
A Other than me or Sean?
Q Correct.
A It is possible that Jane or Sheila or Lloyd had them at some point. I don't know, though.
MR. WITTEN: When you say possession of them, you mean touched them or kept them?
MR. O'CALLAGHAN: Kept them in their office or --
THE WITNESS: Again, not to my knowledge.
BY MR. O'CALLAGHAN:
Q Were they kept in a general area? Were they kept in a specific office?
A They were kept in my office so far as I can recall.
Q The second transcripts that you referred to or the second receipt of any transcripts that you referred to, you said you received Jean Hanson's transcript, that the White House did?
A Yes. The White House received Jean

Hanson's transcript, again, sometime before July 23rd. I don't know from where.
Q Do you know whether it was from a counsel or from an agency?
A I don't know.
Q How do you know it was received before July 23rd?
A Because I read it before July 23rd.
Q Is there a specific reason why July 23rd stands out in your mind with regard to when these transcripts were received?
A I remember that we received transcripts from Treasury on that day, and I know that I had reviewed some transcripts before then. Therefore, we got them from somewhere other than Treasury.
Q With regard to the transcripts that you say the White House received on the 23rd, who at the White House received those transcripts?
A Ultimately I received them. They appeared in a box on my floor.
Q When did you first see them?
A I don't have a specific recollection. I

21

have a general recollection it was Saturday afternoon, the 23rd.
Q Do you have -- you say you don't have a specific recollection, but can you place it within a time frame of a couple hours? Or near lunch?
A I generally recall it was around 4:00, but it is pretty general.
Q Were you working that day?
A Yes, sir.
Q Were you working out of your office?
A Yes.
Q When the transcripts appeared in the box in your office, were you in your office when they were brought in?
A I don't remember.
Q Just to try to help refresh your recollection, do you remember if you walked in and said here is a box, what is this, or someone came in and you thanked them for bringing it in?
A I don't remember how they got there, who brought them in, whether someone from our office went and got them or someone brought them to us. I just

22

know that they appeared on my floor that afternoon.
Q Do you know who brought them in to you?
A I don't remember.
Q Do you know who initially received the box with the transcripts in it?
A I don't.
Q Have you ever learned?
A No.
Q Were you told at any time?
A Not that I recall.
Q Did you ever inquire as to who brought the box of transcripts into your office?
A I don't recall doing that.
Q What did you do once you saw the transcripts?
A I was assigned the task of reading the transcripts for purposes of our preparation of Lloyd's report, and I proceeded to do that over the course of the next roughly 48 hours.
Q Who tasked you out to do that job?
A It was probably Jane.
Q Were you expecting the transcripts to

23

arrive?
A Yes.
Q When had you been tasked out to review them?
A I don't remember exactly when I was given that assignment.
Q Was it the same day or the day before?
A I don't remember.
Q Had you expected the transcripts to come in? Were you aware they were going to be coming in the day before?
A Can you ask that again?
Q I can probably phrase the question a little better.
When did you first learn that the transcripts were going to be delivered to you or to the White House?
A My general recollection is that I knew for a while that we were supposed to be getting transcripts. I don't remember when I first learned that. And I don't remember whether at some point I knew they were coming the next day or something like

24

that. I just have a general recollection that I wasn't surprised when they appeared on my floor; I knew they were coming at some point.
Q Had you been anxious to receive them?
A I don't remember that.
Q Do you remember if it was a big deal when they came in or were you like oh, here are the transcripts, I will get to work, or here are the transcripts, I better get moving?
A I now that I had to review them all before we completed the report and that I didn't have a lot of time to do that. Yes, there was a sense of urgency that I needed to jump on things and start reading them.
Q When was the report supposed to be completed by?
A Lloyd testified on Tuesday the 26th. So presumably sometime the day before.
Q How many transcripts had you reviewed before July 23rd?
A I don't know a specific number.
Q Do you recall a certain percentage of

25

different agency's transcripts you looked at?
A I looked at transcripts of White House witnesses. I looked at Jean Hanson's transcript. I don't remember whether we had Altman's or Steiner's transcripts. It is possible that I reviewed those, but I'm just not sure. And there weren't any others that I reviewed.
Q Who caused the transcripts to be delivered to the White House, the ones of July 23rd?
A I'm not sure what you mean by "who caused."
Q Specifically, do you know who delivered them, what person delivered them?
A I don't know.
MR. WITTEN: She said before she wasn't sure whether someone from the White House picked them up. There may not have been a someone who delivered them.
BY MR. O'CALLAGHAN:
Q I didn't understand whether someone picked them up from the reception desk at your office or whether someone picked them up.

26

A I don't know the mechanics of how they got there.
Q In whose possession were the transcripts before they were delivered to the White House?
A I don't know specifically. I don't know.
Q Were they in the possession of a certain agency?
A I know we got them from Treasury, and I know that the cover letter came with them from Steve McHale at Treasury.
Q At the time did you know who Steve McHale was?
A I probably had some knowledge of that. I have kind of forgotten, actually. I know he worked in the General Counsel's Office.
Q Did you know at the time he worked in the General Counsel's Office?
A I don't remember. I assume he did.
Q On July 23rd, were you familiar with any of the members of the General Counsel's Office at the Department of Treasury?
MR. WITTEN: You said July 22?

27

MR. O'CALLAGHAN: 23rd.
MR. WITTEN: I'm sorry.
THE WITNESS: As I said before, I believe I had spoken earlier with a David Dougherty. I don't know if I spoke with him before the 23rd. I spoke with him before the 27th. I know he was also in the General Counsel's Office. I think that is the only person. Other than possibly Steve McHale at some point I talked to also, yes.
BY MR. O'CALLAGHAN:
Q If you talked to Steve McHale, do you remember what the contents of the discussion were?
A I do not.
Q Did anyone at the White House make a request for the transcripts that were delivered on the 23rd?
A I don't know. Can you ask that again.
Q Sure. Maybe I didn't form the question very clearly.
The transcripts that were delivered on the 23rd, had the White House made a request to receive those transcripts before they were delivered?

28

A I believe so, yes.
Q Who was involved in making any request?
A I don't really know. I don't think I knew at the time. I have had some discussions with counsel that have given me some additional information, but aside from that, I really don't know.
Q Did you ever talk to any of your supervisors about it?
A About what?
Q About who asked for the transcripts from Treasury.
A I don't remember doing that.
Q When you were asked to review the transcripts, I believe you said Ms. Sherburne asked you to do that?
A I believe it was Jane Sherburne. It could have been Sheila Cheston. It was one of the two.
Q Were you told or informed that the transcripts might contain any confidential information in them?
A I don't remember being told that

29

specifically.
Q Were you told anything generally? What is your recollection of that?
A Well, I knew that the transcripts had come with a transmittal letter from Mr. McHale that contained a restriction on the use of the transcripts.
Q Did you read the transmittal letter?
A Yes.
Q What was your understanding of the restrictions contained in that transmittal letter?
A My understanding was that we were not to give or show the transcripts to any White House witnesses until Treasury lifted that restriction.
Q Did the restriction deal with revealing the substance of the transcripts orally?
A I don't remember having -- I don't remember focusing on that aspect.
Q Did you discuss the transmittal letter with anyone at the time?
A I discussed it with Jane.
Q What was the substance of the discussion or

30

discussions you had with Jane?
A Jane felt that transcripts that we had obtained from other sources, specifically the White House witnesses' private lawyers, should not be subject to that restriction, but to my knowledge, we applied that restriction to those transcripts as well. We treated them as though it applied.
Q I would like to show you a document which is Bates stamped S 0020064. It is a one-page document of July 23, 1994. It is addressed to Jane Sherburne, esquire, signed by Steve McHale. I show it to you and counsel.
Let me know when you have had a chance to review it.
(Witness examined the document.)
A Okay.
Q Is the document I have just showed you, is that the transmittal letter you were referring to?
A It appears to be.
Q Did you maintain a copy of this letter?
A I don't remember. Let me ask you to clarify that.

31

I don't remember if I Xeroxed it or kept a copy of it. The letter itself remained in our office, the office I shared with Jane.

Q Did you have any discussions with Jane or anyone else in the office whether you could reveal to people other than showing them the transcripts or letting them read it what the contents of the transcripts were?

A No.

Q Did that ever come up as an issue?

A I don't remember that it did.

Q Are you aware of whether the transcripts or the contents of the transcripts were ever shared with anyone other than Mr. Cutler and his counsel?

MR. WITTEN: Or his staff.

BY MR. O'CALLAGHAN:

Q Or his staff.

A With one exception, I'm not aware of that happening. The exception is that I sent a summary of one of the transcripts to counsel for Lisa Caputo, private counsel for Lisa Caputo.

Q When did that occur?

32

A That was on July 27th.

Q What transcript was it a summary of?

A Steven Katsanos.

Q Was this summary a White House document that had been created by the White House?

A No.

Q What was the origin of the summary?

A I received the summary from David Dougherty in General Counsel's Office. He told me that the summary had been prepared by the RTC and that it was not subject to the restriction in Mr. McHale's letter and therefore we were authorized to provide it to counsel for Lisa Caputo.

Q So, did he say the transcript was produced by the RTC or the summary was?

A He told me the summary had been created by the RTC.

Q And therefore wasn't subject to the summary in Mr. McHale's letter?

MR. WITTEN: Not subject to the restriction.

MR. O'CALLAGHAN: Thanks.

33

THE WITNESS: He told me that the summary did not contain confidential information of the type the RTC was continuing to want to protect. It hadn't lifted the restriction on the transcripts yet, and that it was okay with the RTC and Treasury to provide the summary to counsel since it didn't contain any confidential information.

BY MR. O'CALLAGHAN:

Q Did he tell you what the source of his information was that there was an objection?

A My recollection is that I called Mr. Dougherty and asked him -- let me back up a step.

Q Actually, if you could tell me how you came first of all -- how you came to receive the summary. Did you call him requesting information or documents?

A Jane wanted to provide the transcript, Katsanos transcript to Lisa Caputo's lawyer if it could be done permissibly, and we talked about the need to call Treasury and find out if the restriction on the transcript had been lifted yet. This was on July 27.

34

I called -- I believe I tried to call McHale first and was unable to reach him, but I did reach Mr. Dougherty, who I knew to work for McHale. I asked him if we could send the transcript to Caputo's lawyer.

My best recollection is that he said he would check and call me back. And then he later that day called me back and said that he had checked with the RTC and that the restriction had not been lifted yet, that it probably would be lifted soon, maybe as soon as the next day, but it had not been lifted yet and therefore we should not send the transcript. So I agreed not to.

Q Did he say who he had checked with?

MR. WITTEN: You need to let her finish.

BY MR. O'CALLAGHAN:

Q I'm sorry. I thought you were finished.

MR. WITTEN: I thought you were describing the conversation.

THE WITNESS: There is more to the conversation.

BY MR. O'CALLAGHAN:

35

Q Please continue.
A He then told me that the RTC had prepared summaries of the transcripts and actually he was surprised, he thought we had them already, he thought we had the summaries already, and that the restriction did not apply to the summaries. If we wanted to send a summary to the lawyer, that that was permissible.
He then either offered me the summaries or I asked him for them; I don't remember which. He agreed to make copies for me. Again, my best recollection is that later that day he called me and said the copies were ready. I actually walked over to Treasury to get them. I walked around in front of the White House and over to the gate that separates Treasury from the White House and met him there and he handed me an envelope with the summaries in them.
I then took them back to my office. I read the Katsanos summary. I didn't read the others. I compared it to the transcript to see if there were any inaccuracies in it. I think I identified one and made a handwritten correction on the summary. I then

36

faxed it to Lisa Caputo's lawyer.
Q When you had the discussion with Mr. Dougherty before you went over the pick up the transcripts, when he told you that he had spoken with the RTC, did he identify who he had spoken with over there?
A I don't recall that he did.
Q Did he explain why there was no restriction on the summaries, why the restriction didn't apply?
A My recollection is that he said that the transcripts contained certain information that the RTC wanted kept confidential or nonpublic and that that was the reason for the restriction that had been imposed but that the summaries did not contain that information. They included some substance of the transcripts but not that confidential information. Therefore, the restrictions did not apply to them.
Q Did he say that the RTC had identified or had said that there wasn't confidential information in the summaries?
A That's what he led me to understand.
Q How many summaries did he send you?

37

A I don't remember specifically. It was about a half inch stack of paper. There were several summaries.
Q Did it have a cover sheet on it?
A No.
THE WITNESS: Can I take a two-minute break?
MR. O'CALLAGHAN: Sure.
(Recess.)
BY MR. O'CALLAGHAN:
Q You said you initially tried to get in touch with Mr. McHale when you went to find out if the restrictions were lifted on the transcripts; is that right?
A I believe I did.
Q Then you got in touch with Mr. Dougherty?
A Yes.
Q Had you spoken to him before that time?
A I think I had.
Q Do you remember what it was in connection with?
A No.

38

Q You also said that he represented that the summaries that he provided to you were produced or created by the RTC?
A That's my recollection.
Q Did he identify specifically who at RTC created the documents, the summaries?
A Not that I recall.
Q Did he identify a certain department or branch of RTC that created the documents?
A Not that I recall.
Q I would like to show you a document which bears the Bates stamp S 002065. I show it to you and your counsel. Tell me when you have had a chance to review it. I would like to ask you just a couple questions about it.
(Witness examined the document.)
A Okay.
Q Have you seen that document before?
A I think so, yes. It looks familiar.
Q What is that document?
A I believe that it was attached to McHale's July 23rd letter transmitting the transcripts.

39

Q When you received -- when the transcripts were transmitted on the 23rd, did they have any accompanying materials with them?
A Other than cover letter?
Q Other than cover letter and the transcripts, yes.
A I don't think so, no.
Q Were any transcript summaries included in the box with the transcripts?
A No.
Q So, your recollection is that the document I have just showed you came with the transcripts; is that right? I just want to make sure.
A I have seen this document attached to McHale's letter. I don't specifically recall seeing it in the box with the transcripts.
Q There is some handwriting on that document, specifically there is the name "Foreman" on the bottom, which I believe is crossed out with a line under it. Do you recognize the writing on that document?
A No.

40

Q Do you recognize any of the check marks or any of the other markings on the document?
A If you mean did I make them, I don't remember making them. I can't tell who did from looking at them.
Q Did anyone else receive a copy of the document I just showed you?
A Besides who?
Q Other than you.
A I don't know if any copies were made.
Q Let me describe the document more fully for the record. It is a one-page document entitled "Print file list" with the date 7/23/94 at 3:04 p.m.
Does that help refresh your recollection as to when the transcripts were delivered or when you first saw it?
A Can I see it again?
Q Sure.
A It seems to be consistent with my recollection that we received the box of transcripts with this in it late afternoon on the 23rd.

41

Q In addition, the document on the left-hand side contains a number of names that have cross marks and check marks through them. There is another column in brackets which says "DIR" which appears to be directory, then a date next to that and a time.

This appears to be a file list from documents contained in a hard or soft drive. Do you know if you received any computer disks or electronic data from the White House on the 23rd?

A You mean from Treasury?

Q From Treasury. Excuse me.

A I don't believe we did. I didn't see any.

Q The names that appear on this document, do you recognize any of them?

A Yes.

Q Are you aware of what the list of names refers to?

A I am not.

Q Are the names listed there, are any of those names of people for whom you received transcripts?

A Yes. I guess -- at least most of the names

42

are the names of witnesses whose transcripts I reviewed in the White House, RTC or Treasury. A couple of names I'm not positive about. Most of them I recognize.

Q Are these the same names of people whose transcript summaries you received as well?

A I know I received the summary of the Katsanos transcript. I don't know what other transcripts I received summaries of. I never looked at the other summaries.

Q Did you state earlier that you also received at least a summary from Ms. Hanson?

A No. We received a transcript, Ms. Hanson's transcript. I didn't know where we had gotten that. I think we got a copy in the set on the 23rd, but we had gotten one earlier as well.

Q I would like to show you a series of documents which appear to be in a set which bear the Bates stamps 003939 through 003997. You and your counsel can take a moment to review those and let me know when you have had a chance to properly look at them.

43

(Witness examined the document.)
A Okay.
Q Just generally, have you ever seen the set of documents before?
A Well, the documents appear to be summaries of transcripts. I don't specifically recognize them except that the Katsanos one looks more or less familiar. They may be the summaries I received from David Dougherty, I just never looked at them as a whole in very much detail.
Q With regard to the stack of documents, is that about the relative size of the documents you received from Mr. Dougherty on that day?
A This looks about right.
Q Do these documents resemble in form and structure the summaries that you received from Mr. Dougherty?
A Yes.
MR. O'CALLAGHAN: And also for the record, I would like to note that the Bates stamps on these documents bear an S. These were produced by the White House.

44

MR. WITTEN: I wanted to clear that up too, because there was a question about that during the Sherburne deposition, about whether the White House had produced them.
MR. O'CALLAGHAN: Yes.
MR. WITTEN: We are agreeing with each other that the White House produced them.
MR. O'CALLAGHAN: In addition, the index I referred to earlier also bore an S Bates stamp. I think I identified that. I want to make sure that is clear.
BY MR. O'CALLAGHAN:
Q You are relatively confident that these are the type of summaries that you received from Mr. Dougherty at Treasury?
A I don't have any reason to think they are not.
Q Are you aware whether there is any confidential information, confidential RTC information with regard to the criminal referrals contained in any of these summaries?
A I didn't read any of the summaries except

45

the Katsanos one. As I recall, there was not in that one, but I would have to reread it to be sure.
Q Did Mr. Dougherty ever relate to you that any of the transcript summaries had been prepared by the Office of General Counsel?
A At which organization?
Q I'm sorry. At the Department of Treasury.
A My best recollection is that he told me the RTC prepared them.
Q And is your recollection buttressed by the fact that you recall him going to talk to people at the RTC to see if there was any restrictions on the summaries?
A No. It is just my recollection of the conversation.
Q But you also recall that he said that he spoke to people at the RTC to get their approval?
A He told me, the best I can recall, that he had called RTC to check whether the restriction on the transcript, Katsanos transcript had been lifted, and they said it had not. He then told me about the summaries, that RTC had prepared them and the

46

restrictions did not apply to them. That's my recollection of the conversation.
Q I believe you also stated earlier that he said there was no restriction on the summaries. Did he state how he determined that there was no restriction on the summaries specifically?
A I don't remember.
Q Had he been in possession of the summaries so far as you know, at the time you called him on the 27th?
A That was my general impression.
Q If I have already asked this, Counsel, please let me know. I want to make sure it is clear for the record whether Mr. Dougherty ever represented to you that he had conferred with people at the RTC, specifically with the RTC Inspector General's office, about whether there was any confidential information contained in the transcript summaries.
A I don't remember him telling me whether he had talked -- why don't you ask that one again.
Q Whether or not he had told you that he had spoken with people at the RTC IG's office and asked

47

them whether there was any confidential RTC information contained in the summaries.

A I don't remember whether he told me that he spoke that day to anyone at the RTC about the summaries. He knew about the summaries and told me about them. It is my recollection he said the RTC prepared them and the restrictions do not apply to them.

Q Did he say that they had opined that there wasn't any confidential information in there, in the summaries?

A I don't remember him saying anything about what the RTC had said. He told me that they did not contain the confidential information.

Q That's why the restriction didn't apply to them; is that correct?

A Yes.

Q So, is it your understanding that he didn't confer with anybody at the RTC before he delivered the summaries to you?

MR. WITTEN: That's not what she said.

BY MR. O'CALLAGHAN:

48

Q Do you know if he conferred with anybody at the RTC IG before he delivered the transcripts to you or handed them to you?

A The summaries you mean?

Q Yes, summaries.

A I know -- my best recollection is that he conferred with RTC about whether the restrictions had been lifted. Whether during that conversation he also conferred about the summaries I don't know.

Q So, he didn't tell you specifically whether he had asked with regard to these documents, the summaries, whether he had discussed their release with the RTC to you?

A I don't recall him saying that. I do recall him saying that it was okay with the RTC that they be released.

Q Ms. Conaway, during the course of this inquiry, we have heard testimony of a member of Treasury Office of General Counsel that the deposition summaries that are of the same form and type and many identical in content were produced by the Office of General Counsel at the Department of

49

Treasury. With me saying that, does that change or refresh your recollection as to your understanding where these documents were created?

MR. WITTEN: Before you answer that question, and you may because I don't object to it, you may want to know that counsel, because he thinks it is correct and not improper, has attempted to refresh this witness's recollection by referring to that witness's testimony on that subject. That's one of the reasons we feel that this whole hearing is a sham.

But you may answer the question.

THE WITNESS: All I can testify to is what I remember. It has been over a year ago. It was a very busy period of time. My recollection is he said he told me they were created by the RTC or at least I came away with the understanding the RTC had created them. When I say "them" my focus is always exclusively on the Katsanos transcript. At least I understood that RTC had created that one.

(Pause.)

BY MR. O'CALLAGHAN:

50

Q I would like to show you a document bearing Bates stamps S 007108 through S 007112.

It is -- the front page bears a fax cover sheet. It is from the White House counsel's office. It is dated 7/27/94. It is to Bill Taylor from Sharon Conaway. Pages covered is four. There is a note which reads "RTC will not release transcripts before tomorrow, but I am able to send this IG summary for you and Pat to see, but not public."

Following the cover page appears to be "deposition summary, Steve Katsanos" and there is a handwritten note which appears at the end which I will ask you to identify. Here is the document.

(Witness examined the document.)

A Yes.

Q Actually, I will direct the questions to the pages 7108 through 7111.

A Okay.

Q That appears to be a single document. Have you seen this document before?

A Yes.

Q When did you first see it?

51

A Pages 7109 to 111 is the summary of the Katsanos transcript that I received from David Dougherty, including some handwritten notes of mine. I prepared the cover page. This was all on July 27th.

Q Is this the deposition summary which you referred to earlier that you received?

A From David Dougherty?

Q Correct.

A Yes.

Q At any time after you sent this, did you develop any concerns about the fact that you had sent it to Mr. Taylor?

A Yes. After I sent the fax, I told Jane Sherburne that I had sent it -- where I had gotten it and that I had sent it. She was familiar with the fact these summaries existed and made a comment, something that we had not planned to get the summaries. I have a somewhat vague recollection of calling Mr. Taylor's office and asking them not to use the summary after all, basically out of an abundance of caution.

52

Q When did that call occur?

A I believe it was the evening of the 27th.

Q Was there any specific reason why you asked him not to use the summary?

A Simply because Jane had said we hadn't intended to get them and we were very sensitive to appearances and thought that might be best.

Q Was there any specific significance to the fact that you hadn't intended to get them and why you were hesitant to share them?

A I didn't know why she had not intended to get them. She didn't share that with me.

Q I'm trying to understand -- you cited as one of the reasons for not wanting to share them was the fact that you hadn't intended to get them. I am trying to understand how the intent not to get them affected the decision not to -- to ask them not to share them.

A Well, someone above my level, Jane or someone, had decided they didn't want them. I had gotten them, and I guess I wanted to correct that to the extent I could. It wasn't based on a concern of

53

the substance of it. It was just the form.
Q Did they say why they didn't want to use them?
A No.
MS. BERNSTEIN: Not use what?
THE WITNESS: The summaries.
BY MR. O'CALLAGHAN:
Q Was there any specific reason why there was a concern about appearances?
MR. WITTEN: Are you asking whether Jane expressed such a reason to Sharon or whether Sharon had heard such a reason from Jane's remarks or whether Sharon had concerns about appearances for reasons that may or may not have related to the specific conversation she was having with Jane?
MR. O'CALLAGHAN: I was just asking about the basis of your comment earlier about there were concerns about appearances that were articulated and what the basis of that was.
MR. WITTEN: Thanks.
THE WITNESS: I had an understanding that I and I think all of us were trying very hard to

54

conduct the investigation in a correct way. There was a restriction on the transcripts themselves and while sending the summary had been expressly authorized by Treasury, I had a concern that it might create a negative appearance.
BY MR. O'CALLAGHAN:
Q To whom?
A Anyone who might be in a position to criticize the conduct of the investigation.
Q At that date, had there been any criticism of the investigation?
A Not that I specifically recall.
Q When you say the use of the summaries was expressly authorized by Treasury, what authorization are you referring to?
A To Mr. Dougherty's telling me that use of the transcripts was authorized -- of the summaries, I mean, not of the transcripts.
Q I would like to direct your attention to 007112, which is a handwritten note. Do you recognize the handwriting on that?
A It is my handwriting.

55

Q When did you write this note?
A I can't be positive of that. I believe it was sometime after July 27th.
Q Was it within a week, a month, six weeks?
A My best recollection is that it was shortly before or in connection with the preparation of a response to an inquiry we had gotten from a Congressman or Senator about the use of the transcripts. I think it was early August.
Q Had someone posed questions to you about the issue of whether the White House could provide transcripts to witnesses?
A I have -- again, all of this is a long time ago. A lot was happening at once. I have a general recollection that Jane asked me at one point whether I had given or shown a transcript, a Treasury IG transcript to any witness, and I said no. I remember that I orally reminded her about sending the summary. I think I also wrote this note at some point in the same general time period.
Q When you said you orally reminded her about the summary, had you told her about that before?

56

A I told her about the summary the night of the 27th.
Q What is your recollection of that conversation?
MR. WITTEN: She has already testified to that.
MR. O'CALLAGHAN: I don't think she has.
THE WITNESS: Yes, we talked about that before.
MR. WITTEN: You can do it again.
THE WITNESS: My general recollection is I told her about the summaries -- I told her about getting the summaries and sending the Katsanos summary, and she said that she knew about the summaries and hadn't wanted to get them.
I also know, having had my recollection refreshed, that I wrote a memo on the same subject to her that is dated July 27th.
BY MR. O'CALLAGHAN:
Q Did you deliver the memo you wrote on the 27th to her?
A I don't specifically remember writing it.

57

I don't know how I gave it to her, whether I left it for her in her office or handed it to her. More likely I would have left it for her.

Q I would like to have you refer specifically to 007112.

A Yes.

Q I will read it briefly into the record. "Jane, RE: Issue of whether we gave IG transcripts to witnesses, please recall that I faxed a three-page summary" -- it looks like there is underlining under there -- "of the Katsanos transcript to Caputo's lawyer. I do not believe the lawyer showed it to Caputo, but do not know for sure. We should discuss?" And it is signed "S."

First of all -- who is Caputo?

A Lisa Caputo.

Q Who is she?

A She was an employee, I think she still is, of the White House.

Q She was one of the witnesses during the IG depositions?

A I don't believe that the IG deposed her.

58

She testified on the panel of White House witnesses before the House. I don't believe she testified before the Senate.

Q What was her position at the time?

A I believe she was Hillary Clinton's press secretary, but I'm not positive of that.

Q The next part reads "do not believe the lawyer showed it to Caputo but do not know for sure." What was your basis for believing that the -- for thinking that the lawyer might not have shown the summary to Caputo?

A As I testified earlier, I called Lisa Caputo's lawyer, I believe it was the evening of the 27th, after I had sent the fax and after I had the conversation with Jane.

Q That's Bill Taylor; right?

A I don't believe I ever spoke to Bill Taylor. I think I spoke to an associate of his, a female. I told her that we preferred they didn't use the summary with Ms. Caputo. I remember her telling me that they hadn't and that they didn't intend to.

MR. WITTEN: "Hadn't" is what you said?

59

THE WITNESS: Hadn't and did not intend to.
BY MR. O'CALLAGHAN:
Q Did she give you a reason why they hadn't used it?
A No.
Q You said "but do not know for sure." Why did you say that or write that?
A I didn't have any way of knowing what the lawyers actually had done with it.
Q Then the next line says "we should discuss?"
Did you have a discussion after you gave her this note?
A I don't recall.
MR. WITTEN: I don't think she testified that she actually gave the note to her.
BY MR. O'CALLAGHAN:
Q Did you give this note to Ms. Sherburne?
A My recollection is I left this note on her chair. That would have been my normal practice.
Q After you wrote the note and put it on her

60

chair, did you have any discussions of this subject?
A I don't recall. I do recall that I had a discussion with her about sending the summary sometime in that early August time period. I don't remember whether that discussion came before or after I wrote this memo.
Q I would like to show you a document Bates stamped 007913. It is a one-page document that reads "privileged and confidential attorney work product. Draft July 27, 1994." It is a three-paragraph note addressed to Jane.
(Witness examined the document.)
Let me know when you have had a chance to review it.
A Okay.
Q Have you seen this document before?
A Yes.
Q What is this document?
A I think it must be a memorandum that I prepared. I don't really remember preparing it, but it looks like mine.
Q It is dated July 27th; is that right?

61

A Yes.
Q Is it possible this was the memo you prepared for Ms. Sherburne on the 27th with regard to giving Ms. Caputo's attorney copies of the Katsanos transcript?
A Katsanos summary.
Q Yes, excuse me.
A This was the document I was referring to, yes.
Q I would like to direct your attention to the second paragraph. Could you read that into the record, please.
A It starts with a "2" in parentheses. "David Dougherty at Treasury told me the RTC has not yet agreed to release its transcripts, but may do so tomorrow. He said they seemed very touchy about the transcripts and expressed to him some dismay that Treasury had given them to the White House. RTC's concern is that it does not want nonpublic information released that could impair its investigations. He stressed that it is important that nothing in the transcripts be made public, at

62

least with attribution, until they are released. I told him we understood that."
Q The sentence that said nothing in the transcripts should be made public, at least with attribution, what was your understanding of his sentiments to that effect?
A I don't remember.
Q Do you recall if Ms. Sherburne had a reaction to the memo you prepared on July 27th?
A I don't remember.
Q Do you remember if she had any kind of reply or reaction to it at all?
A No.
Q Did you discuss the transmittal of the Katsanos summary with anyone other than Ms. Sherburne?
MR. WITTEN: Time frame?
BY MR. O'CALLAGHAN:
Q Through August 5th, 1994.
A I don't recall that I did.
Q Did you send copies of transcript summaries to anyone else?

63

A No.
Q Were they distributed to anyone else in the White House?
A No.
Q Did you maintain the transcript summaries after you received them for a period of time?
A I kept them either in my office or in the locked cabinet in Jane's office. Both our offices also had locks.
Q Did you ever return them to the Department of Treasury at any time?
A No.
Q Did anyone at Treasury ever express any concern to you about the fact that they had transmitted the summaries to the White House?
A No.
Q Do you know whether anyone at the RTC IG's office was informed that you had received these summaries?
A I don't know.
Q I would like to show you a document bearing Bates stamp S 010712. Please take a look at that.

64

(Witness examined the document.)
A Okay.
Q For the record, the document I just described is a one-page document, it appears to be a fax cover sheet that says "the White House" and then "counsel's office" under it. It has a rather large picture of the White House on it. On the document it is dated 7/18/94, and --
MR. SACHS: It is almost bigger than Al D'Amato's press statement.
(Discussion off the record.)
BY MR. O'CALLAGHAN:
Q It is dated 7/18/94 and it is I believe directed to Ed Dennis from Jane Sherburne. I believe the coverage says "4" and then says "deliver ASAP."
Have you seen this document before?
A No.
Q Do you know if any materials were faxed by Ms. Sherburne to Ed Dennis on the 18th of July 1994?
A I don't know.
Q Do you recognize the handwriting on this document?

65

A It looks like it might be Jane's, but I can't tell for sure.
Q Is it your handwriting?
A No.
Q Did the White House counsel's office before July 29th -- before July 30th, 1994, did the White House counsel's office ever receive any drafts of the Inspector General's report?
A I don't know.
MR. WITTEN: Does that mean not to your knowledge?
THE WITNESS: Not to my knowledge, that too.
BY MR. O'CALLAGHAN:
Q The next question is have you ever heard that copies of the draft report were delivered to the White House?
A No.
Q Are you aware whether anyone else at the White House caused summaries of transcripts to be delivered to anyone?
A To my knowledge, they did not.

66

Q Do you have knowledge that they were not delivered to anyone outside the White House?
A That what? Summaries?
Q Correct.
A I am pretty darn sure they were not. They were in my custody, and I didn't deliver them to anyone else.
MR. O'CALLAGHAN: I have no further questions at this time.
MR. SCHAUER: I just have one or two.
Do you want to take a break?
THE WITNESS: Yes.
(Recess.)
MR. WITTEN: The witness wanted to amplify one answer she had given. Before when you followed up on part of her answer, she didn't get around to giving you the other part of it.
MR. O'CALLAGHAN: Certainly. Please do.
THE WITNESS: You had asked whether I ever transmitted the substance of a transcript to a witness, and I said no, with the exception of the summary, sending the summary. There was another part

67

to that that just didn't come out.
As best I can recall, again, while I was waiting to get the summary from Mr. Dougherty after he had told me he would provide it to me and I could send it, I have a recollection of calling Lisa Caputo's lawyer, again, I think it was the associate to Bill Taylor, and telling her that the summary was available and I would be sending it and that Mr. Katsanos had only mentioned one contact with Lisa Caputo. As far as I can recall, that's all I told her about the transcript, and I expected that information to be in the summary.
BY MR. O'CALLAGHAN:
Q You didn't have any substantive discussion about the contents of the transcript, though, in that conversation, did you?
A No, except that it only referred to one contact between Katsanos and Caputo.
MR. O'CALLAGHAN: Okay. Thank you, Ms. Conaway.
MR. WITTEN: We just wanted it to be complete.

68

MR. O'CALLAGHAN: I appreciate it. Thank you.
EXAMINATION
BY MR. SCHAUER:
Q When was the first time you spoke with either Mr. Taylor or his associate? I guess you can't recall her name.
MR. WITTEN: I think it is Leslie Burger.
THE WITNESS: I think it was on the 27th, during the conversations I have related.
BY MR. SCHAUER:
Q Did anyone direct you that you should provide this summary to Mr. Taylor's office?
A You mean anyone in the White House?
Q Anyone.
A No. Jane had directed me to provide the transcript itself if the restriction had been lifted, but no one specifically directed me to provide the summary.
Q And in the course of the conversation, Mr. Taylor's associate, Leslie Burger --
A I don't remember that name either. It was

69

a woman in Mr. Taylor's office.
MR. WITTEN: We will stipulate to call her Leslie Burger, whether or not that was her name.
BY MR. SCHAUER:
Q She simply requested that you provide the transcript or whatever information you could provide?
A She did not request I provide it. I called her to let her know I would be sending it, my recollection is.
Q I think you testified at that point that you had a copy of the transcript because you looked at the transcript when you got the summary?
A Yes. I received the transcript among the documents that Treasury provided on July 23rd.
Q Just to be clear on what your thoughts were at that time, you decided not to send the transcript because your understanding was that Treasury still had an injunction about sending those to witnesses or counsel for witnesses?
A My understanding was that RTC and/or Treasury still wanted the restriction to apply,

70

right, so I didn't send it.
Q And your understanding was formed based on your conversation with Mr. Dougherty?
A Yes.
Q Did you have conversations with anyone else in the Treasury OG's office about this restriction at that point?
A No.
MR. WITTEN: You may have misspoken. I think you said the Treasury OG's office. Did you mean general counsel?
BY MR. SCHAUER:
Q General counsel.
A No, I did not.
Q Did you have occasion to speak to Mr. Dougherty after you had faxed the Katsanos summary to Mr. Taylor's office?
A I don't remember ever speaking to him again, but I'm not sure.
Q When you spoke to Mr. Dougherty, in the course of that conversation did you get the sense that Mr. Dougherty considered this to be a

71

significant event, his providing these summaries to you?

A I recall my memo of July 27th reflects that he was surprised we didn't already have them. So, no, it did not seem like a big deal in his mind to be giving them to me.

Q So, it wouldn't surprise you if he forgot about that conversation if asked about it?

A It wouldn't surprise me one way or the other. I didn't know him that well.

MR. SCHAUER: That's really all I have.

EXAMINATION

BY MR. O'CALLAGHAN:

Q I have a couple of follow-ups.

Were the transcripts that the White House received from the Treasury on the 23rd ever released to the witnesses or counsel for the witnesses?

A Not to my knowledge.

Q Was there a meeting with counsel for the witnesses on Sunday, July 24th, counsel for the White House witnesses?

A Yes.

72

Q Were the transcripts provided during that meeting to counsel to the White House witnesses?

A I don't know what happened at that meeting.

Q Did you attend it?

A I believe I was there for about the first five minutes, but I did not attend the balance of the meeting.

Q Did you help prepare for it?

A No.

Q Do you know what materials were used in connection with that meeting?

A No.

Q Do you know if transcripts were used in that meeting?

A I don't know.

Q Do you know if summaries of transcripts were used in that meeting?

A I wasn't at the meeting, but obviously I would have a -- I didn't have the summaries at that time. I didn't get them until the 27th.

Q Just so we are clear, you are absolutely

73

certain you didn't receive summaries on the 23rd either?
A I'm sure of that.
Q Positive?
A Yes.
Q You earlier said that you asked to see if the restriction had been lifted on the 27th with regard to the transcripts when you talked to Mr. Dougherty; is that right?
A Yes.
Q Was the restriction ever lifted?
A I believe it was.
Q And when was it lifted?
A I don't know the specifics of that. I do know that the transcripts were provided as attachments to OGE's report the following weekend in redacted form.
Q In redacted form?
A Yes. I don't know what other events might have occurred that would constitute lifting of the restriction.
Q Are you aware of any formal lifting of the

74

restriction that occurred?
A I think the answer I just gave is the best I can do.
Q You can say yes or no.
A I'm not sure what you mean by "formal."
Q Did the White House receive formal notification, either written or oral, that the Treasury had lifted the restriction on the transcripts?
A No.
Q I promise you I just have a couple more.
MR. SACHS: I was about to withdraw my compliment.
(Discussion off the record.)
BY MR. O'CALLAGHAN:
Q How many different conversations did you have with Mr. Dougherty?
MR. WITTEN: On July 27th?
BY MR. O'CALLAGHAN:
Q First of all, why don't we just talk about conversations with regard to the summaries and transcripts in or around July 27th.

75

A The only time I recall discussing summaries or transcripts with Mr. Dougherty was on July 27th. My memory of the sequence of events is somewhat hazy. I know I had at least one telephone conversation with him, and I know that I met him in person to pick up the transcripts. I think I might have had a series of conversations with him in the course of determining whether the restrictions were lifted and when the summaries were ready for pickup and so forth, but I don't remember exactly how many there were.

Q Do you think there was more than one conversation?

A Telephone conversation?

Q Correct.

A I think so.

Q Did you have a separate conversation about setting up pickup of the summaries?

A I must have found out they were ready so I could go over and pick them up. On that, I think that we had a conversation where he called and said they were ready.

76

Q How much time transpired between the time he said he could have the transcripts for you and he told you you could pick them up?

MS. BERNSTEIN: Summaries.

THE WITNESS: Summaries, yes. I don't specifically recall. It wasn't more than a couple of hours.

BY MR. O'CALLAGHAN:

Q But it wasn't like five or 10 minutes?

A I don't think so, but I don't specifically recall.

Q Did he physically hand over the summaries to you? Was he the person who gave them to you?

A Yes.

Q You have a specific recollection of that?

A Yes.

MR. O'CALLAGHAN: I have no further questions.

Before we go off the record, would counsel like to clarify anything or ask any clarifying questions?

MR. WITTEN: No.

MR. SACHS: No.

(Whereupon, at 8:08 p.m., the deposition was concluded.)

SHARON E. CONAWAY

CERTIFICATE OF NOTARY PUBLIC & REPORTER 78

I, BRENDA M. SMONSKEY, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Brenda Smonskey

Notary Public in and for the
District of Columbia

My Commission Expires SEPTEMBER 14, 1996

DEPONENT SHARON E. CONAWAY

ERRATA

PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
5	2	with ETC me	me	appears to be transcription error
9	8	Attorney-client work product	Attorney-client, work product	punctuation error
24	10	now	know	spelling error
25	6	And there	There	transcription error
26	18	he	I	transcription error
16	4	I believe some	I believe, some	punctuation error
30	21	Let me ask you to	Let me	transcription error
32	3	Steven	Stephen	possible spelling error
32	9	General Counsel's Office	General Counsel's Office in the Treasury	clarification
33	18	Kattens transcript to	Kattens' transcript to	punctuation error
42	2	reviewed in	reviewed from	clarification
51	18	Something that	Something like that	transcription error
75	20	On that,	Based on that,	transcription error

DEPOSITION OF W. DENNIS AIKEN
IN RE: S. RES. 120

THURSDAY, NOVEMBER 9, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Telephone deposition of W. DENNIS AIKEN, called for examination pursuant to notice of deposition, at 1:10 p.m. in Room 534 of the Dirksen Senate Office Building, before BRENDA M. SMONSKEY, a Notary Public within and for the District of Columbia, when were present:

VIET D. DINH, ESQ.
Majority Associate Special Counsel
ANDREW M. SCHAUER, ESQ.
Minority Assistant Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

ANDREA M. SIMONTON, ESQ.
CHARLES J. SGRO, ESQ.
U.S. Department of Justice
Tenth Street & Constitution Avenue, NW
Washington, DC 20530
On behalf of the Deponent.

CONTENTS

WITNESS	EXAMINATION
W. Dennis Aiken	
by Mr. Dinh	3
by Mr. Schauer	13

PROCEEDINGS

Whereupon,

W. DENNIS AIKEN

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. DINH:

Q Mr. Aiken, my name is Viet Dinh. I am with the Majority staff of the Senate Whitewater Committee. This deposition is conducted pursuant to Senate Resolution 120. The resolution establishes a Special Committee administered by the Banking Committee of the Senate to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings & Loan Association and related matters.

Section 1(b)(2)(c) of Senate Resolution 120 authorizes investigation and public hearings into whether the Department of Justice has improperly handled RTC criminal referrals relating to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation, and this will be the focus

of today's short deposition.

I will ask a series of questions and ask you to testify to those under oath. If you don't understand a question, please let me know. I will rephrase it. If you need a break, let me know.

The stenographer who is here will prepare a record of questions and answers. The transcript will be treated as committee confidential until the commencement of the hearings.

Prior to the hearings you will receive a letter from the committee telling you you may come to the Senate to review a transcript of your deposition and make note of any corrections to transcription on an errata sheet.

You may be represented by counsel, and as I see it, Ms. Simonton from the General Counsel's Office of the FBI is here. Objections to the form of the question will be noted for the record and counsel may object on grounds of privilege and relevance.

And I should note for the record that Mr. Aiken is participating in this deposition via telephone, on his way to Newport, he advises us.

5

State your name for the record, please.
A W. Dennis Aiken, A-i-k-e-n.

Q What is your present position?
A I am a special agent for the FBI in Providence, Rhode Island.
Q What was your position in 1992?
A I was -- well, from April '92 through the end of '92, I was the unit chief of the public corruption unit at FBI headquarters.
Q Based here in Washington, D.C.?
A That's correct.
Q In your position as unit chief of the public corruption unit, did you come to be aware of any inquiry or information regarding any allegation about William Clinton or Hillary Rodham Clinton?
A What was the first name? William something?
Q Bill Clinton or Hillary Rodham Clinton.
A You will have to ask that question again. That is a fairly general question.

6

Q I'm sorry. In September of 1992, did you have any knowledge of any information or allegations against Hillary Clinton or Bill Clinton?
A Any allegations?
MS. SIMONTON: Can we focus this a little more narrowly. I think as you have heard before, there are frequently numerous allegations and rumors floating around about various things. If we could perhaps focus it to whether he received any inquiries from DOJ, it might be a little bit easier and then I won't have to go on to a private phone to discuss what if any rumors, allegations or innuendos may have been floating around in general.
MR. DINH: That would be fine.
BY MR. DINH:
Q Did you receive any inquiry from the main Department of Justice regarding Bill Clinton or Hillary Rodham Clinton?
A Not that I recall. I basically don't remember.
Q You don't remember any such inquiry?
A I don't remember it. I mean, I'm not

7

saying it didn't happen and I'm not saying that it did. I am just saying that I don't remember in that time frame.

Q Outside of this time frame, outside of September 1992, did you receive any inquiry from the main Department of Justice with respect to Bill Clinton or Hillary Rodham Clinton?

A That's a very broad question, and I tell you what the situation is. I had a regular liaison relationship with the public integrity section of the Department of Justice. It was not unusual for me to get a call to see if we had heard something, if we had anything on something or whatever. So to sit here and tell you that I didn't, I couldn't tell you that. You would have to ask me a specific question.

Q How about in August of 1992, did you receive any such inquiry?

A I don't recall.

Q In September of 1992?

A I wouldn't recall.

Q And how about in October of 1992?

A I wouldn't recall that.

8

Q Any such inquiry from August of 1992 to prior to November 3, 1992, which is the election?

A We were getting a lot of calls in the election about a lot of things, okay, and we had a lot of things going on. But to sit here and for me to try to tell you that I recall a phone call from the Department of Justice really in any specific time frame, the answer would be the same. I can't recall that.

Q Do you recall making any calls, you yourself making any inquiry to the Little Rock FBI office relating to Bill or Hillary Clinton?

A I recall having a conversation with Steve Irons in Little Rock. I can't tell you when that call was, nor can I recall in specific detail what the conversation was about. But it is possible it could have been about allegations on the Clintons or me asking him if I had anything or it could have been as a result of whatever. I just -- I recall having a conversation, but I just don't remember specifically what it was about.

Q Do you know if that conversation was in

9

1992?
A That conversation occurred, to the best of my recollection, it would have been between the election and the swearing in of office. That's to the best of my recollection.
Q Was this the only conversation you had with Mr. Irons in 1992?
A I wouldn't say that.
Q How about in the latter half of 1992?
A I have no idea. I mean -- can you hold on one second?
Q Sure.
(Discussion off the record.)
BY MR. DINH:
Q You mentioned while we were off the record that your partner was in the car. Can you identify your partner for us?
A It is Nicholas Murphy.
Q He is a special agent with the FBI also?
A Right.
Q You said your conversation with Mr. Irons was between the election and the swearing in.

10

A To the best of my recollection, I remember a conversation with Irons during which -- the only conversation I can remember with Irons, I can remember bits and pieces of it. I can remember one thing about it was concern that the nature of his work in Little Rock would change because of President Clinton's election, because Little Rock was no longer going to be Little Rock as it used to be. Based on my experience, the way allegations come in, I think that is obvious to everybody. So I had a conversation with Irons, I know, during that time period about that.
Q And this is the same conversation you testified to earlier that occurred between the election and the swearing in?
A I would think so. I can remember having only one conversation with Steve Irons and myself. Due to the nature of my job, I can't sit here and swear to that. I can remember that conversation. I am not saying I didn't have other conversations. I am just saying that I don't remember any others.
Q You don't specifically recall a

11

conversation in September of 1992 then?
A You are asking me to pin down dates of conversations from 2-1/2 to three years ago, now three years ago. I'm just not able to do that for you. I have asked Mike Farnham, who is the current unit chief in there, to check and see if there are any records that could help me recall, and there are none, according to him. I don't recall writing any records. I normally, from just a general conversation, would not have.
But as a result of the conversation I just told you about with Mr. Irons in which we were talking about how Little Rock was going to change, I know that was around that time because I sent a supervisor to Little Rock shortly thereafter, and that would have been in January.
Q I know you have testified with respect to having no recollection, but I just wanted to be thorough and to cover it.
A Right. I understand that.
Q So, do you recall any conversation with Steve Irons with respect to any information you may

12

have received relating to corruption about the Clintons?
A No.
Q Do you recall what your telephone extension was in September of 1992?
A 5690.
Q And this would be --
A That was my direct line.
Q That was your direct line?
A Yes, would be 202-324-5690. The unit's line, there would be a general line, which would be 202-324-5701.
Q Did you have a secretary there at the time?
A Yes.
Q Do you recall what her extension was?
A She would have had my same extension. She would have had both of those. It would be 5701, 5702, 5703. Those rolled into each other. My direct line would have been 5690. I could make calls out on either line, and I called out on either line all the time.
Q And she does not have a separate line where

13

she could place calls for you?
A No.
MR. DINH: I have nothing further.
EXAMINATION
BY MR. SCHAUER:
Q Mr. Aiken, this is Andy Schauer. I'm with the Minority staff. I just have a few follow-up questions.
A I can barely hear you.
Q I just have a few follow-up questions for you.
A Okay.
Q Actually, I'll maybe just probe this a little deeper and see if we can't come up with any recollections of a conversation that Mr. Irons recalls that he pinpoints around September, and I just want to tell you that because we are struggling with the timing here.
A Okay.
Q Do you know who Mr. Raphaelson is, Ira Raphaelson?
A Yes.

14

Q Who is Mr. Raphaelson?
A He used to be with the department, didn't he?
Q Yes, he did.
A You know, you are going to have to forgive me here.
Hello?
Q Yes.
A I couldn't -- their titles over there, I know he was a high ranking member of the department, but their actual titles, I had a hard enough time when I was there straightening out what their titles were.
Q During this time period, he was head of the financial fraud section --
A Okay.
Q -- although Mr. Raphaelson did have experience in public corruption at the department.
A Okay. I have never had a conversation with Mr. Raphaelson.
Q Okay. That answers that question.
Did there come a point when you became

15

aware of an RTC criminal referral relating to the Clintons?

A Well, I became aware of that case, okay, and I became aware of that case in 1992, around that same time period.

Q When you say around that same time period --

A Around the September -- around the election.

Q But prior to the election or after the election, if you recall?

A I would say that it would have been after the election, because in my position, my only interest -- well, I'm not going to say that. It would have been around the election. It would have been around the election. That's my best answer.

Q To follow up on what you were about to allude to and something that I want to clarify, your role in the public integrity --

A Public corruption unit. What we did, we provided oversight for all the corruption investigations that the FBI was handling. That's a

16

very broad statement. There is a lot more detail than that.

Q Right. The question I want to focus in on this is whether or not you would have had reason to be involved in cases or allegations concerning a candidate for a federal office rather than someone who was --

A The answer to that is yes. I would have had reason to know. If somebody were to make an inquiry, say if one of my superiors were to make an inquiry about that person, like have you got anything on this guy or do we have any pending investigations or whatever, they would call me.

Now, that's not to say that I would have that investigation. But because I was the center point of where those questions would come and because of a lot of other technical issues, I would normally know of those investigations. But they may not be in my unit, which was the case with the matter that you guys are concerned about. That was not an investigation under my supervision.

Q Do you recall how you became aware of the

17

criminal referral?
A Well -- you use the term "criminal referral." I never became aware of how that case was opened.
Q Okay.
A People would tell me things, but I didn't get into the details. I was aware that there was a case. I was never aware that either of the Clintons were the targets of that case. I want to make clear that I was not aware of that. I just was aware that there was a bank fraud, what my term would be a financial institution fraud investigation going on concerning this Whitewater thing, and I never knew the actual details of it.
Q And this may be too broad of a question for you to answer, but who would have made inquiries of you as to whether a case was opened in an FBI office?
A Well, there could have been a lot of people making inquiry, but there would be very few people I would talk to.
Q Okay.
A If the public integrity section called me

18

or, say, Jack Keeney, which would happen occasionally, or somebody that I knew to be a ranking member of the department, I would say Keeney and above, or somebody from the public integrity section that I knew, if they called, I would usually get them an answer.

The ranking people, say, Keeney and above, would usually call at a level higher than mine in the FBI, say, Fred Verinder, the deputy assistant director or above or Larry Potts and sometimes the question would come that way but more often than not -- I won't say more often than not, but often I would get a question from Verinder or Potts and I wouldn't know what is generating the question. Do you see what I mean? They would just say do you have a case in Little Rock or do you have a case in Kansas or whatever and I would just get the answer for them.

Then if they requested -- based on a question like that, if they wanted me to write a document, like sometimes they would say, particularly if we had a case, they would say give me the details

19

and write a note.
Q Okay.
A If the answer was negative, then I can't remember a time when I wrote a note on a negative response.
Q And just to clarify your testimony some, who in the FBI would have made inquiries to which you would have responded to about the existence of a case to you? In other words, was it just Mr. Verinder or were there others in the FBI who regularly would have inquired about the existence of cases?
A Well, I'm trying to -- generally -- and I can't remember any exceptions, let me put it that way -- anybody in the chain of command above me, which would have been the section chief, the deputy assistant director, the assistant director, the deputy director or the director. I never got a call directly from the director. But anybody up that chain could have made an inquiry of me that I would have responded to.
Q Is there anyone else from the FBI that you would have responded to?

20

A If somebody from another unit such as -- if another unit within the criminal division or even outside the criminal division, another division within the FBI, if they were initiating something, initiating an investigation on somebody or they had received a complaint and they had information that I had a case, they would sometimes come to me and say hey, do you have anything on Joe Blow, you might say.

So there are all types of directions inquiries might have come from. But in this particular case, there wouldn't have been any inquiries from anybody else but a superior.
Q Is there anyone else other than the people that we spoke about in the Department of Justice including those people in the FBI who might have contacted you regarding the existence of a case that you would have responded to?
A You're talking about this particular issue?
Q Well, let's start --
A I mean, anybody in the FBI could have inquired of me about the existence of a case, okay.

But to try to keep the field pertinent here, about this particular issue, the way I understand it, I could have talked to Ron Dick about it, because he is the unit chief that had the investigation. He was the financial institution fraud chief. I did have some conversations with him about the case, but it was administrative matters after the election to make sure the case was going to be.

This is just oversight issues.

Q Now, outside of the department, and I mean to include the FBI when I say the department --

A I never talked to anybody outside the department.

Q Let me ask the question so it is clear on the record.

A Okay.

Q Did you ever have any conversations with anyone outside the Department of Justice regarding the existence of a referral or a case regarding Madison Guaranty or the Clintons?

A No, never.

Q Do you have reason to believe that anyone

within the department had any conversations with anyone outside of the department regarding Madison -- regarding a case, the case against the Clintons -- a case -- let me withdraw that and try again.

Are you aware or have any reason to believe that anyone within the department had conversations with anyone in the White House regarding the existence of a case or a criminal referral involving Madison Guaranty or the Clintons?

A No.

Q Did you receive any press inquiries --

A No.

Q -- involving this matter?

A No.

MR. SCHAUER: I think that's all I have at this point.

MR. DINH: I have nothing further.

MR. SGRO: We are done.

(Whereupon, at 1:37 p.m., the deposition was concluded.)

W. DENNIS AIKEN

CERTIFICATE OF NOTARY PUBLIC & REPORTER 23

I, BRENDA M. SMONSKEY, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Brenda Smonskey

Notary Public in and for the
District of Columbia

My Commission Expires SEPTEMBER 14, 1996

DEPOSITION OF G. RANDOLPH COLEMAN IN RE: S. RES. 120

THURSDAY, NOVEMBER 9, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of G. RANDOLPH COLEMAN, called for examination pursuant to notice of deposition, at 12:45 p.m. in Room 534 of the Dirksen Senate Office Building, before CARMEN BUNCH, a Notary Public within and for the District of Columbia, when were present:

LOUIS J. GICALE, ESQ.
Majority Deputy Special Counsel
LANCE COLE, ESQ.
Minority Deputy Special Counsel
RICHARD BEN-VENISTE, ESQ.
Minority Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

CONTENTS

WITNESS	EXAMINATION
G. Randolph Coleman	
by Mr. Gicale	3
by Mr. Ben-Veniste	88
by Mr. Gicale	148
by Mr. Cole	159
by Mr. Gicale	160

3

PROCEEDINGS

Whereupon,

G. RANDOLPH COLEMAN

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. GICALE:

Q Could you please state your name for the record.

A George Randolph Coleman, Jr.

Q Your present business address.

A 10 Shackleford Plaza, Little Rock, Arkansas 72221.

Q And where are you currently employed?

A I'm currently employed at American Investors Life Insurance Company.

Q In what capacity?

A Senior vice president and general counsel.

Q Mr. Coleman, this deposition is being conducted pursuant to Senate Resolution 120. The

4

resolution established a Special Committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, Capital Management Services, Inc., the Arkansas Development Finance Authority and other related matters.

Section 1(b)(2)(c) of Senate Resolution 120 authorizes investigation and public hearings into whether the Department of Justice has improperly handled RTC criminal referrals relating to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation. This will be the focus of today's deposition.

This deposition is in advance of a public hearing. The hearings are ongoing and will go at least through next week during the current session. We will be asking you a series of questions. You, of course, are testifying under oath. If you don't understand a question, let us know and we will rephrase it. The stenographer will prepare a record of questions and answers. The deposition will be

5

treated as committee confidential until the commencement of the hearings.

Prior to the hearings, you will receive a letter from the Committee telling you that you may come to the Senate to review the transcript of your deposition and make a note of any corrections for transcription on an errata sheet.

You may be represented by counsel, and I note that you are appearing here alone.

Objections to the form of questions will be noted for the record. Counsel may object on the grounds of privilege or relevance. The Committee chairman may rule on objections where the witness refuses to answer a question.

Do you have any questions?

A No.

Q Now, are you aware of a request -- off the record.

(Discussion off the record.)

BY MR. GICALE:

Q You were asked, Mr. Coleman, by the Committee to produce documents relevant to this

6

inquiry. Have you searched your records and produced all the records that you believe are responsive to the Committee's request?

A I have researched all the records I have had time to research and produced for you on November 1 and then again yesterday, November 7, records that are responsive to the subpoena and the letter.

Q And just so the record notes, today you've produced a copy of a letter that you sent to Joseph Kolinski, chief clerk, on November 7 and attached to it are a number of phone calls, phone call records.

A Records of my long distance phone calls --

Q Long distance phone calls.

A -- during the relevant period.

Q Of June, July, August and September, 1993?

A Yes.

Q Now, while you did send it to the clerk, neither Majority nor Minority counsel have received a copy from the clerk, so we may be asking you questions from this.

A That's fine. I do not represent to you that I have had a chance to get through all of my

7

records. There are some phone message slips that are numerous and voluminous. I have not had an opportunity to get through to see if there are any phone message slips that would be responsive to communications that I have had. But other than that, I can't think of anything I have not looked at yet.

Q Did you speak to anyone with respect to the substance of your testimony today?

A No, other than my client, in terms of production and documents.

Q Now, your client is and was, I believe, in 1993 David Hale; correct?

A David Hale and the liquidation, Small Business liquidation action, I think I entered an appearance for Capital Management Services, Incorporated.

Q When did you first start representing Mr. Hale?

A It would have been approximately August 10 or 11, 1993.

Q And that was with respect to what matter?

A It had been known to him that he was the

8

subject of a federal investigation and there had been some notification to him as an officer of Capital Management Services, Inc. that the Small Business Administration liquidation section would be filing a civil action for the receivership and liquidation of that entity.

Q And that would have been around August 10 or 11, 1993?

A Yes, sir.

Q Now, after that point, after that date on August 10 or 11, did you -- strike that.

Starting with that date, August 10 or 11 at the beginning of your representation of Mr. Hale, how soon after assuming responsibility for his representation did you start having discussions with the U.S. Attorney's office in the Little Rock district.

MR. COLE: Eastern District of Arkansas.

MR. GICALE: Eastern District of Arkansas, I'm sorry.

THE WITNESS: Eastern District of Arkansas. I would say probably the next day.

9

BY MR. GICALE:
Q And who did you discuss Mr. Hale's matter with?
A Mr. Fletcher Jackson.
Q And did you indicate to Mr. Jackson or attempt to seek from Mr. Jackson some kind of plea disposition for your client or the availability --
A Ultimately I had discussions with him in an attempt to commence a negotiation to that end, yes.
Q And when would the first discussion with respect to that have been?
A That would have started -- probably August 12, 13 would have been the initial discussion. I'm not certain that the subject of a -- the content of any sort of plea agreement or arrangement was discussed at that time. We had a general discussion of what the government's willingness would be to enter into that kind of negotiation. I never entered into any plea negotiations with Mr. Jackson.
Q Well, did you discuss the availability of a potential plea for your client in return for offering some information in August of 1993?

10

A I discussed that, yes, with him.
Q Did you indicate to Mr. Jackson the type of information that your client could provide?
A At a subsequent meeting, yes.
Q When would that have been?
A Oh, that would have been within a matter of another two or three days from my initial meeting with Mr. Hale and Mr. Jackson.
Q And what information did you tell Mr. Jackson that your client could supply to him?
A Well, we did not discuss specifics of information. We discussed some names and transactions that could be explored.
Q Which names and which transactions?
A Madison Guaranty Savings & Loan, James McDougal, Susan McDougal, Master Marketing, Clinton, Jim Guy Tucker, Castle Sewer & Water, South Loop Construction Company, Campobello Realty. I can't recall whether at that point in time the list went further or not. There may have been another name or transaction. I don't recall right now that I mentioned anything else to him at that point in time.

11

Q This is a list of names and -- you said a list of names and transactions?
A Names and transactions.
Q When you just recited --
A Castle Sewer & Water transaction, South Loop Construction, Master Marketing, Madison Guaranty would have encompassed a number of things.
Q Did you give him details with respect to these transactions?
A No, I did not.
Q So the information you gave him was the information you just recited?
A My message to him was if you-all are interested in negotiations, here are the areas in which I think Mr. Hale could help you, among others.
Q Was anyone else present when you gave this information to Mr. Jackson?
A At the first meeting, no, there was not.
Q Now, when you say --
A There was initially another attorney who accompanied me to Mr. Fletcher Jackson's office on my initial visit, Mr. Dale Price, who was the attorney

12

that referred Mr. Hale to me. We did not discuss any of those things at the first meeting. The first meeting just encompassed matters dealing with the fact of the timing of David Hale's impending indictment.
Q Did Jackson tell you that he was going to be indicted shortly?
A Yes. Requests of alternatives that would allow matters not to be made public to allow us time to negotiate. Mr. Jackson's declination of those overtures. That Mr. Hale would be indicted on September 21, I think it was. That that was nonnegotiable -- that they were preparing initial indictments and subsequent indictments and that the whole thing was nonnegotiable at that point. There was just a mention made of are you willing to entertain any plea negotiations. At that point in time he stated that he wasn't -- that wasn't his decision to make in this particular case, and we just discussed procedural related matters, nothing substantively at all. That pretty much ended the first meeting.

13

Mr. Price was at that first meeting. He was kind of just the handoff attorney, handing off the case to me and that was about the extent of all of our conversations at that point in time. It was at a subsequent meeting with Mr. Jackson and myself at which I related this list of names and transactions that Mr. Hale could participate in information.

Q How long after the first meeting around the 13th of August did the second meeting occur?

A I'd say approximately two days.

Q So perhaps August 15, '93?

A Somewhere in that time frame. 15th, 16th.

Q Do you know whether it was before or after Paula Casey was appointed the interim U.S. Attorney of that office?

A I can't remember exactly. Seems like she came in like August 14 of that year and the only way I remember that is I had another case over there, another bank white-collar case that we had negotiated an information that Mr. Pence, one of the assistants, had signed and it had to be redone because the date

14

we appeared in court on the negotiated information, Paula Casey had been sworn in.

So I want to say she was there on like the 14th. I could be off a week, but I think that's correct.

Q So you don't know whether or not she was the U.S. Attorney when you had this second discussion with Mr. Jackson?

A I don't know for sure. I think she was, but I'm can't be positive. There would be a record that would tell us.

Q Was there anyone else present when you had this second conversation with Mr. Jackson?

A No, it was just Fletcher and I.

Q After you gave Mr. Jackson this information, did he indicate to you that he would convey this information to anyone above him?

A No.

Q What was his response once you gave him that information?

A His response was that he was not going to participate in any plea negotiations in this case.

15

Q Did he give you a reason why?
A Not exactly. He never really did. He just told me it wasn't his call to make and he wasn't going to do it.
Q Did he tell you that you would have to convey this information to someone above him, either Ms. Casey or, eventually, Mr. Johnson?
A I asked Fletcher at the close of that meeting as I was leaving if he cared -- it's coming back to me, I think now at that second meeting Paula Casey had already been sworn in because I asked him -- well, no, I'm going to retract that.
I am not sure, because at that point in time, Richard Pence had been the acting U.S. Attorney. And at the time I closed that second conversation with Fletcher, I don't think there was another one because there was some confusion about if I couldn't deal with him, who would I go to and who would I talk to. And I told him if he didn't mind, I would continue up the ladder, and he said he didn't.
It seems like after that I called Richard Pence, who was the acting U.S. Attorney. Richard

16

deferred on it because he was solely the acting U.S. Attorney and didn't want to get involved in it at that point in time because he anticipated somebody on a permanent basis.
Q Did you discuss the same specific information, names and transactions, that you discussed with Mr. Jackson with Mr. Pence?
A No, we never got that far.
Q By the way, was one of the transactions or names Whitewater? Did you mention that with Mr. Jackson in August?
A I mentioned Whitewater, and there's another one that comes to my mind also. I told Mr. Jackson that Mr. Hale had been approached on what he perceived to be a money laundering scheme through an insurance company that he had an interest in there in Little Rock, and that Mr. Hale could provide information on that circumstance also. And Mr. Jackson told me that he probably knew more about that scheme than either Mr. Hale or I did. He wasn't interested.
Q Now, so the way it was left after talking

17

to Jackson and Pence was that you would have to talk to somebody else about this matter --

A Yes.

Q -- correct?

A Right.

Q Did you have any further discussions with either Pence or Jackson in the month of August of '93?

A I didn't with Pence. I only had one conversation with him that I recall. Off and on, I had conversations with Fletcher because I think I had one or two other meetings or conversations with Fletcher after that August 15 time frame, and they were again related to -- and I believe I made an initial offer that we would waive statute of limitations if statute of limitations were perceived to be a problem by the government in relation to the charges against David Hale. That was declined.

I think subsequently I went to Fletcher and made a proposal that if he were indicted, that the indictment be sealed pending further attempts to negotiate because I had made a suggestion to Fletcher

18

at one of our meetings that Hale was still being contacted routinely by some of the folks involved in these circumstances on a daily basis, and that some sort of electronic surveillance or something of that sort might still be possible, but that that would be gone when the indictment came down and everything was made public.

And the advantage to David's cooperation would be somewhat -- well, it would be totally compromised and lost at that point and he wouldn't have the ability to deliver full value in any sort of plea arrangement.

Q Any other discussions with Mr. Jackson during that period of August 1993?

A None that I can recall. I think he sent me a copy of a draft of an indictment that he was proposing, something of that sort. I don't recall having any other significant communication with him.

Q Now, what was the next thing you did with respect to contacting a supervisor of Mr. Jackson's?

A At some point, Paula Casey came into office. I had a very general phone call or two with

19

her before Labor Day of that year. I can't remember whether I wrote her any letters in August or not. If I did, I provided them to you.

At some point there was an FBI agent, whose name escapes me at the moment, that I contacted and made everybody kind of nervous, because Fletcher in one of our meetings had said, you know, that any plea negotiation would be up to somebody other than him. When I asked him who he said, you know, it would just be somebody else, that I might want to get hold of somebody in the FBI. Somewhere I got the name of an FBI agent. I think his name was Gary Irons, or Steve Irons.

Q And you called him?

A I think I called Steve.

Q When would that have been?

A It would have been late August.

Q Did you tell him what you had told Fletcher Jackson with respect to --

A I told him something along the order of that Mr. Hale, under the right circumstances, was interested in a negotiated arrangement that would

20

involve his cooperation and that I couldn't find anybody that I could make any headway with over in the U.S. Attorney's office and that it was suggested to me I might want to call the FBI.

I'm sitting here trying to think where I got Mr. Irons's name to know that he was associated with this. It may have been from Fletcher, but somewhere or another, I got his name and I called him.

Of course, you know, he instantly said he'd have to work through the U.S. Attorney's office, there was nothing he could do. Steve Irons was the fellow's name.

Q Now, either in the discussions with Jackson or the discussion with Irons, did you indicate the type of plea disposition that your client might be interested in --

A Well --

Q -- or disposition?

A The only thing I threw out on the table to start with was the fact that he wanted an immunity.

Q Were there any other options discussed in

21

August 1993?
A No, we never got any real negotiation started.
Q After Mr. Irons indicated that he couldn't do anything, what is the next thing you did with respect to trying to talk to somebody about a plea?
A All of this is happening at or about the same time Paula Casey came into office. It seems like I had a very general phone call or two with her prior to Labor Day. We set up a meeting for the Tuesday after Labor Day in her office, and I went to her office that Tuesday morning and met with her and a fellow named Michael Johnson.
Q Johnson was present at the meeting?
A Yes.
Q How long was the meeting?
A 15 minutes, max.
Q Did you tell Johnson and Casey what you had told Jackson in terms of the names of people and transactions?
A Yes.
Q You repeated the names of those people and

22

those transactions to the two of them?
A Yes, yes.
Q Did you indicate what your client might be interested in in terms of a disposition in return for the information with respect to -- information?
A Again, I think at that point in time all that was ever discussed was an immunity, but again, we never really got to the point of any meaningful negotiations, so it kind of stopped.
Q Again, so there is no misunderstanding, when you went to see Paula Casey and Mr. Johnson the day after Labor Day, you gave them the names Madison Guaranty, James and Susan McDougal, Master Marketing, Clinton, Tucker, Castle Sewer & Water, South Loop Construction, Campobello Realty, Whitewater and perhaps other things; correct?
A Yeah, and I remember another one I discussed.
Q With?
A With Fletcher earlier on, too. There was a -- the name escapes me right now. There was a fellow on the SBA advisory counsel that had

23

approached David Hale on a deal through the SBA that was in some aspects of formation at that point in time that David didn't regard as being entirely proper. I indicated his ability to assist in that also, and for the life of me, I can't remember the name of the guy right now, but it will come to me.

Q Was that transaction discussed with Casey and Johnson?

A I don't recall that that one was specifically discussed. It was my impression when I met with Casey and Johnson that they had already talked with Fletcher and they were aware of some of these things before I ever got there that Tuesday after Labor Day.

Q Why was that your impression?

A I believe one or the other told me they had visited with Fletcher.

Q And did they discuss what Fletcher had told them about your prior conversations with him?

A No, no, we didn't go into it, other than I told them that, you know, I felt like Mr. Hale's ability to assist them was fairly substantial and

24

that it warranted a real close look by them.

Q And what was their response?

A I got no response at that meeting. It was sort of a we'll-look-into-it type situation.

Q Did you give them any more details with respect to those transactions?

A No, I wasn't going to give anybody any details because I wasn't being offered anything in return, so details were not open for discussion at that point. I was not offered any possible parameters if a proffer was made or anything of that sort, so we never made any at that point.

Q Did they indicate to you that if there was to be any disposition, it would have to be in the form of a felony plea of some sort at that point?

A The only thing that I was offered at that point was bring Mr. Hale over here and let him tell us what he's got and then we'll tell you what we'll do, and that wasn't good enough from my standpoint.

Q Now, when was the next time you had a conversation with either Paula Casey or Michael Johnson with respect to the discussion you had with

25

them the day after Labor Day, or Mr. Hale's case?
A I don't remember. There wasn't much in the way of response. I don't recall that I ever got a call back or a formal response from them after that meeting the day after Labor Day before the time Mr. Hale was indicted. I did have a meeting with them, and I can't remember whether it was before or after David was indicted. It seems like I sent you-all some notes of a meeting I had with them somewhere here. When was that? That was after he was already indicted.
Q That would have been in October of '93?
A Yeah. I didn't have any real hard-core contact with them. I don't remember any communication I had with Michael Johnson between, I think that was September 7 and September 21 or 22, whenever Hale was indicted. We passed some letters back and forth, but I don't recall any other real deep conversations we had on the point.
Q What about discussions with Fletcher Jackson during that time period? Did you continue to have plea discussions with him?

26

A I did not have any plea discussions with him. We had some mechanical, procedural discussions of him telling me when David was going to be indicted, arrangements for surrender and that sort of thing, but he and I never had any discussion that I can recall -- that Fletcher and I ever had -- after I talked to Paula Casey and Michael Johnson.
Q So Paula Casey never -- strike that.
I'm going to show you what's marked for identification as Exhibit Number 7640 through 7641. It's a letter dated September 15, 1993 to Paula Casey from you regarding David Hale.
(Witness reviewed the document.)
Is this a copy of a letter you sent to Paula Casey on September 15, 1993?
A It is.
Q In the first paragraph, it seems to reference some personal phone conversations that you had with respect to this matter.
A She and I had -- as I say, I know I had one or two with her to set up the meeting for September 7. I don't recall any that I had with her after

27

that.
Q Okay. So the phone conversations you're referencing are the ones that occurred before the meeting. Then later on in the next paragraph you do reference the meeting dated Tuesday, September 7; correct?
A Yeah, and I state there's been no real movement since our conversation, and if we had had a conversation, it was not anything of any great import after that September 7 meeting.
Q Now, what was the purpose in your sending this letter at this point in time? Was it because you had --
A To document what was happening.
Q Was it also because you hadn't received a response from Paula Casey with respect to your offer?
A I had not received any response, and I was just trying to document the course of events, that I regarded as kind of unusual, since I had first become involved in this case to that point in time, September 15, 1993.
Q Now, what did you regard as unusual at this

28

point in time?
A That I couldn't get anybody to talk to me on a matter that I regarded as fairly significant. One of my meetings with Fletcher after the -- well, it may have been at the conclusion of the initial meeting that I had with Fletcher. Fletcher told me I didn't know what I was getting into and prior to that time, I had not had an opportunity to visit with my client to any great extent. The next day I did. Through conversations with him, I became impressed with the significance of the circumstances.
At my next meeting with Fletcher, I told him I realized what he was talking about at our first meeting and that, yes, indeed there were some significant circumstances involved in this case. And the other reason that I knew that all of this was up was because I think at that first meeting I had seen a copy of the search warrant for David Hale's office back in July and the names of the five captions of the records that had been seized, and that -- in that search of Capital Management's offices back in July.
So, you know, in these initial discussions,

29

I mean, there came to be not a lot of secrets about the scope of the inquiry because that was already laying out there on the table as to what the government had asked for in terms of records on Tucker-related loans, McDougal-related loans and those sorts of things. That was already out on the table in the form of the search warrant.

Q Now, in your letter of September 15, this is the third paragraph of the first page, you indicate that you "cannot help but believe that this reluctance is borne out of the potential political sensitivity and fallout regarding the information which Mr. Hale could provide to your office." And then you go on to say "but at the same time, it is information which would be of substantial assistance investigating the banking and borrowing practices of some individuals in the elite political circles of the state of Arkansas, past and present."

What political sensitivity and fallout were you referencing and what members of "the elite political circles of the state of Arkansas, past and present" were you referencing?

30

A Well, you had McDougal. McDougal had been politically prominent there for a number of years. Obviously Jim Guy Tucker, Clinton. By the time I wrote this, I think I was aware of the involvement of a fellow named Steve Smith, who had been one of Clinton's chief political staff folks there in Arkansas. Paula's husband was a --

Q Paula Casey?

A Yeah, a political appointee on, I believe, the Public Service Commission. So when you're sitting there talking about, you know, especially the present sitting governor of your state and things of that sort, I would categorize that as political sensitivity --

Q And you would --

A -- and adverse information. I can certainly see a lot of negative fallout regarding that. Otherwise, it was my impression, based upon the climate that I encountered in the U.S. Attorney's office, that everyone was just kind of walking on eggshells on the thing. I mean, that was my impression. I mean, I practiced law down there for

31

25 years, and I just hadn't encountered a situation like this.
Q Now, is there any question in your mind that when you were referencing political sensitivity in the elite political circles, that Paula Casey understood what you were talking about based on your conversation the day after Labor Day?
A Oh, I couldn't tell you what she understood or didn't understand.
Q Clearly you had stated these names to her --
A It didn't miss me. I mean, I don't know. I'm not the smartest individual in the world.
Q But clearly you had recited these names to her the day after Labor Day; correct?
A Yes.
Q Now, did you become concerned at that point, directing your attention to the second page to this letter, 7641, concerned about whether or not it would be appropriate for Paula Casey's office to continue on with this investigation? Was that the purpose in writing the second to last paragraph?

32

A Yes, sir.
Q And that was based on your impression that these people did not want to handle the case?
A Yes, sir.
Q And was that based on the fact that they had not responded to you with respect to the proffer of information you had given them; correct?
A Yes.
Q Now, did you indicate --
A And I've known these people. Paula and I were friends. I mean, I've known she and her husband for years and years. They were friends of mine. They used to be neighbors of mine. I mean, I honestly thought I was writing this as a friend to say hey, you need to step aside.
Q How long did you know Paula Casey?
A I'd known Paula Casey for -- oh, jeez, I'm trying to think -- at that point in time a good 15 years or so. I went to law school with her husband. They were neighbors for several years out in River Ridge. I mean, I'd just known them.
Q When you say "these people," who else did

33

you know? Did you know Michael Johnson?
A I'd known Michael for a long time. Known Fletcher for years and years.
Q How did you know Michael?
A Just through local association in the legal community there in Little Rock. I'd worked against Fletcher on cases for years and known him.
Q Now, did you bring up these political sensitivity issues or the fact that perhaps it would be appropriate for Paula Casey to -- her office to terminate their participation in the September 7 meeting?
A I don't think it came up in that meeting.
Q So you only began to suggest this in this letter of September 15, after you had not received a response from them; correct?
A That's correct.
Q And then I'm going to show you what's marked for identification --
A To back up to September 7, I did offer at that meeting -- I'm looking at the last sentence of the first full paragraph on the second page of my

34

letter. At the meeting with she and Michael on September 7, I had offered an informal proffer through counsel of Hale's information.
Q And what was their response to that?
A I had never gotten one. I say here, "I have received no interest in the process," and I hadn't.
Q So when you say in the last sentence of the first full paragraph on the second page of this letter "for instance, I have offered an informal proffer of Mr. Hale's information for evaluation of its quality and content," what you were referring to was an attorney's proffer?
A Yes.
Q And that is something that you conveyed to them on September 7, 1993; correct?
A Yes.
Q And that is something that they had not responded to you as of September 15, 1993; correct?
A No, there had been no ground rules established or anything of that sort by which a proffer could be made.

35

Q Now, in terms of the process for the proffer, without getting into details, how did you envision an attorney's proffer would be handled? What kind of attorney's proffer were you talking about, something --

A Well, obviously that it would be a proffer by counsel, verbal.

Q More detailed than you had offered?

A More detailed than had been offered, but it is not coming from the mouth of the target, so that he is not subjected to liability. In other words, we -- I was just trying to do that as an avenue to try to get the ball rolling. If I tell you a little bit and you like it, then maybe you're going to come back and tell me you might be willing to do something for me if this all were to pan out. It was just an attempt to get the ball rolling to some negotiation.

MR. GICALE: Off the record.

(Discussion off the record.)

BY MR. GICALE:

Q Now, did you indicate in the September 7 meeting that you wanted anything in return for the

36

attorney's proffer that you just related?

A No.

Q So you would make that prior to any commitment from them in terms of some kind of disposition?

A If it could be done under circumstances whereby Mr. Hale incurred no disadvantage or liability for it, yes.

Q So were you requiring immunity or a misdemeanor disposition before you would do something like that, make an attorney's proffer?

A No, I was just trying to open the package and give them a peek and create some interest.

Q I'm going to show you what's marked for identification as Exhibit Number 7639. This is a letter dated September 16, 1993 to Randy Coleman regarding David Hale from Paula Casey.

(Witness reviewed the document.)

A All right.

Q Now, this letter, do you recall this letter?

A Yes.

Q This letter references your letter of September 15, 1993; correct?
A Appears to.
MR. BEN-VENISTE: Off the record.
(Discussion off the record.)
THE WITNESS: Second paragraph of this, I do recall some of the other content of our meeting because we did discuss the fact that David was a sitting judge at that point in time. Misdemeanor was discussed because with a felony indictment, David would automatically be off the bench as a sitting judge.
BY MR. GICALE:
Q Now, again, so that there is no misunderstanding, at the September 7 meeting, were you requiring that Mr. Hale receive immunity and/or a misdemeanor in return for your attorney's proffer of information or was the immunity and/or misdemeanor request related to Mr. Hale's proffer of information?
A As I recall the meeting, these sorts of things were couched -- somebody has got to make an offer, somebody has got to start the ball rolling. I

think I did that by saying Hale -- if you would grant immunity, Hale would cooperate. Apparently there was no affirmative response to that.
I think I then went to a fallback position of a misdemeanor. In other words, at this point I'm just trying to get some kind of reaction from my opposition here trying to find some common ground. My other position at that was, you know, if we can't do any of those things, what if I make an informal proffer as his counsel? Where are we then? What-can-we-do-then type situation.
Q So if we can't do those things -- again, if we can't do immunity, if we can't do a misdemeanor, then your offer was if I make an attorney's proffer, what did we do then?
A If I make an informal proffer to you through counsel and give you an idea of what is available, can the negotiation carry forward in some form from that point. I'm trying to get a dialogue started with these people, and I'm not getting anywhere. I'm trying to throw anything out there on the table I can think of to try to get that started.

39

Q All right. And they did not respond to that last request?
A I didn't get any response to that.
Q In the letter of September 16, there's no mention of the attorney's proffer that you indicated you discussed on September 7; is that correct?
A Doesn't seem to be.
MR. GICALE: Off the record.
(Discussion off the record.)
BY MR. GICALE:
Q Go ahead. You were --
A I'm looking at the letter of September 16 that Paula sent to me, and the only thing that they would tell me is that Mr. Hale presents himself, pleads guilty to a felony, then we will hear what you have got to say, then we will tell you what, if anything, we're going to do for you.
Q So you viewed this as a requirement that your client plead to a felony before they would even listen to your attorney's proffer of information; correct?
A Yes.

40

Q Now, between September 16 and September 20, 1993, did you have any further conversations with Ms. Casey or Mr. Johnson?
A Give me the dates again, September --
Q 16 and September 20, 1993. Before we get to that, let me reference a document identified as number 7632. It's a letter dated September 20, 1993 to Paula Casey from Randy Coleman.
A I don't recall any conversations I had with them.
Q Now, this letter is regarding David Hale. Do you recall sending this letter to Paula Casey?
A Yes.
Q What was your reason for sending this letter at this point in time?
A We were on the eve of the date that the U.S. Attorney informed me that Hale would be indicted, and it was one last attempt on my part to do something to try to preserve a negotiation.
Q Now, in response to your earlier letter of September 15, wherein you indicated that it would not be appropriate at this point for that office to

41

consider terminating -- asked whether or not it would be appropriate for that office to terminate its participation in the investigation and bring in an independent prosecutorial staff, did you have any further discussions or response with respect to whether or not someone else should come in to handle this case or -- that's the first question.

A I don't recall getting any at that point in time.

Q Did either Ms. Casey or Mr. Johnson indicate that if you had any problem with their decisionmaking in this, that you could go to the Justice Department in Washington to discuss the matter at that point?

A I honestly don't recall. I don't think that that came up. I just don't remember that being discussed.

Q And I take it that Ms. Casey or Mr. Johnson, neither of them responded to your request that perhaps they consider stepping aside on this matter; correct?

A Not at that time.

42

Q I'm going to show you --

A You know, I wrote that letter, I just thought I would be uncomfortable -- that letter where I suggested they step aside, I just thought to myself, I'd be uncomfortable in this position, and it might cloud my reasoning and logic if I were in their position or her position. And, you know, again, that was just another subjective consideration that I had in writing that letter.

Q Well, as a friend of hers and of Michael's, did you think that this was helpful advice to them?

A Well, that was my intent. I didn't intend to be overly adversarial or anything of that sort at that point in time.

Q Now, showing you what's marked for identification as document 16479 through 16480. This is a letter dated September 20, 1993 to Randy Coleman from Michael Johnson. Do you recall this letter?

(Witness reviewed the document.)

A Yes.

Q Now, I take it by reviewing this letter, that there was some phone conversation between the

time of the earlier letter of September 20, 1993 to Paula Casey from yourself and the time of this letter?

A Apparently there was a phone call between Michael and I.

Q Did you call him or did he call you? I'm sorry. Actually, the letter --

A It says he phoned me.

Q What did you talk about?

A Independent of this letter, I'm going to be hard pressed to tell you what we talked about.

Q Well, after reviewing this letter, the letter indicates that he requested that you provide a proper venue of information your client wished to bring to their attention; correct?

A Yes.

Q Was that true?

A As I recall, the landscape had not changed up to the date of this letter, which was that for them to receive a proffer, David would do so in a vacuum in the sense that he would be required to plead to a charge as yet undefined, a felony charge

as yet undefined. It would be in a vacuum in the sense that because the charge wasn't defined, we would not know what the sentencing guidelines would be. We would not know what, if any, recommendation the U.S. Attorney would make after evaluating Mr. Hale's information.

We had no indications whatsoever of what use Mr. Hale's information would be put to, i.e., what fruit it might bear, which would go to his benefit at any sentencing, because as you-all are aware -- I mean, you can give information, but if it's not substantial and if it's not helping or if people are not using it to help, then it's not going to do him any good to go tell his story.

We had been unable to get to the point as of September 20 where we could fill any of that vacuum, because they are still telling me that they will provide my client with a motion authorizing reduction of sentence for substantial assistance upon his plea of guilty to a felony charge of fraud and his providing the substantial assistance.

Now, what that tells me is you come over

45

here and stick your head in a noose and then we're going to tell you how tight we're going to pull it and we'll go on from there. That just was not an acceptable basis for us to offer our cooperation at that point in time.

Q Now, what about the idea of an attorney proffer of information? Was there some discussion?

A I didn't regard this as an attorney proffer. I took this to mean that they were still wanting Hale.

Q What happened to the discussion with respect to the attorney proffer?

A I don't really recall anything ever occurring substantially on that point.

Q When you asked them to get more specific with respect to the crime that they would like him to take a felony plea to, what was their response?

A By this date, we never really got to that point. By the day of this letter, of September 20, there had just not been anything happening on that point. Been refined slightly because they say fraud, but that leaves a whole panorama of possibilities out

46

there.

Q Now, when in the second paragraph Mr. Johnson states "of course, to date your client has offered no tangible information on which any such arrangement could yet be made," was it your belief that he was addressing your attorney proffer at that point?

A I have no idea, other than the fact that as I told you earlier, you know, I had not offered any details of Mr. Hale's knowledge on any of the events, transactions and persons whose names had been set forth. He is absolutely right. There had been no information offered, if that's what he's referring to, and that's what I took it that he was referring to.

Q Now, at that point in time, what were you requiring that they do for you to give them an attorney proffer of information?

A We had never really discussed that. As I told you earlier, there had never been any ground rules established for that because the discussions had not proceeded to that point.

47

Q So you had made that offer on September 7?
A Yes.
Q Without any conditions on it, I take it?
A Well, I made the offer that if we could get to that point, I would be willing to make an attorney proffer of the information under circumstances that would not create any additional liability or incrimination for Mr. Hale. And that was the point of not having Mr. Hale sit down at a table and open his mouth and say things that could be used against him.
Q But did you indicate that you were prepared to do that before they made a commitment as to what kind of disposition they would require?
A Yes. My only concern was that it not create or enhance the liability of Mr. Hale. That was my concern at that point in time. As I stated to you earlier, I'm just trying to find a way to get the door open, get some negotiations started.
Q Then I'm going to show you what's marked for identification as Exhibit 17493. It's another letter dated September 20, 1993. It's to Michael

48

Johnson regarding David Hale from you.
(Witness reviewed the document.)
A Okay. This is it. I wrote it.
Q Now, you indicate in this letter in the second sentence "I previously indicated to your office that we were willing to listen to reasonable proposals other than immunity for some time" --
A Yes.
Q -- "but did not receive concrete offers."
A Yes.
Q Now, as you've testified, they did not counter with any proposals after you had advanced immunity, misdemeanor or an attorney proffer; is that correct?
A I don't recall any, other than if you want to couch it as a condition or an offer that Mr. Hale come over and plead guilty and then we'll sit down and listen to his story and then we will make a motion for reduction of sentence if we like what you say.
Q Now, you also indicate in this letter that you "had previously indicated to Fletcher" -- and

that's Fletcher Jackson; right?
A Uh-huh.
Q "Some time ago very definitive areas in which Mr. Hale had knowledge and also reviewed a list of names involved as well."
A Yes.
Q Now, that's a reference to your conversation with Mr. Jackson in August of 1993; correct?
A Yes.
Q And again, did you also provide that same information to Ms. Casey and Mr. Johnson on September 7, 1993?
A Yes. What I'm referring to here is I believe my intent was, you know, this process has been ongoing for a good many weeks and that, you know, Mr. Fletcher was my first and initial contact and they had had the definitive areas in which Mr. Hale could help them for some period of time.
Q Mr. Jackson, at that point in time, had had the information since mid-August of 1993; correct?
A Yes.

Q And Ms. Casey and Mr. Johnson had had it since September 7, 1993; correct?
A From me. I don't know what their communication was with Mr. Jackson.
Q I'm going to show you what's marked for identification as Exhibit 5167 through 5168. This is a letter dated September 21, 1993, to Randy Coleman regarding David Hale from Paula Casey. Do you remember receiving that letter?
A Yes.
Q Now, I'm going to direct your attention to the third paragraph, and in particular the fifth sentence starting with "Moreover."
A Yes.
Q See where it says "Moreover, you have claimed that your client can provide information and have set forth names allegedly involved." Then the next sentence goes on to say "However, on each occasion that you have been requested to furnish specifics, including again yesterday, you have declined to do so."
Was that correct?

51

A Basically correct.
Q Had you supplied names?
A Yes.
Q And by that point in time, you had offered to give them an attorney proffer with respect to more specifics; correct?
A Yes.
Q So that --
MR. BEN-VENISTE: Excuse me, off the record.
(Discussion off the record.)
MR. GICALE: I'm sorry, what was the last question and answer?
(The reporter read the record as requested.)
BY MR. GICALE:
Q So that when Ms. Casey indicates that you have declined to do so, that's not quite correct, is it?
A In the context that it had been previously discussed, that is correct. It is not correct that I had refused under any circumstances to do it.
Q Now, between the time of the last September

52

20 letter and this letter on September 21, 1993, did you have any phone conversations with either Mr. Coleman or Ms. Casey?
A Mr. Johnson or Ms. Casey?
Q I'm sorry, Mr. Johnson or Ms. Casey.
A Again, I don't recall any. If we've got something that I could look at, but I just don't recall any.
Q Well, in this letter, Ms. Casey references some contacts she had with a reporter from The New York Times.
A Uh-huh, yes.
Q Now, do you recall having any phone discussions with her with respect to that contact by the reporter from the New York Times?
A I don't recall whether I did or not.
Q Now, in the letter she indicates that the reporter indicated to her that he had contact with your client and had interviewed your client extensively on Thursday regarding his information; correct?
A That's what it says.

53

Q Were you present for that interview?
A I think so.
Q Now, did you arrange for that interview?
A Did I?
Q Yes.
A Yes.
Q Why did you do that?
A Because at that point in time, it did not appear that anything was going to happen in terms of an ability to negotiate any sort of plea arrangement with the U.S. Attorney -- and I'm not going to launch out into my conversations and communications with Mr. Hale, except to say that it was determined as a course of conduct that a first public strike, if you will, was probably preferable to any other course of action.
Q Now, again, by September 20 and 21, 1993, had you been given the option of going to the Department of Justice in Washington to try and negotiate a plea?
MR. BEN-VENISTE: Object to the form of that question.

54

BY MR. GICALE:
Q I'll withdraw that and rephrase it.
By September 21, 1993, had either Ms. Casey or Mr. Johnson or anyone else from the U.S. Attorney's office in Little Rock indicated to you that you could go to the Department of Justice in Washington to have them evaluate your offer or request for disposition?
A I don't recall that ever being discussed.
Q Did you view that as an option at that point in time?
A Oh, I can't say that I was totally ignorant of it.
Q Did you attempt to contact anybody in Washington at the Department of Justice with respect to that disposition?
A No, sir.
Q Why didn't you?
A Well, again, without going into attorney-client communications, the decision was made between Mr. Hale and myself that given the particular circumstances, it probably would be a waste of time.

55

Q Now, going back to July, August and September 1993, did you attempt to call Webster Hubbell?
A Give me the dates again.
Q July, August and September 1993.
A Yes, I did.
Q And how many times did you call him?
A I don't know. There were several.
Q Showing you --
A From June through September there were several passes back and forth. There were probably a couple of conversations.
Q And what were those calls to Mr. Hubbell about?
A I had another client who was the subject of an antitrust type investigation being conducted out of big Justice up here in D.C.
MR. GICALE: Off the record.
(Discussion off the record.)
BY MR. GICALE:
Q Back on the record.
Go ahead, Mr. Coleman.

56

A And that was the circumstance that gave rise to that communication.
Q Now, at any time during June, July, August or September 1993, did you talk to Mr. Hubbell about the David Hale matter?
A No.
Q Did you attempt to call him with respect to the David Hale matter?
A Never.
Q So if there were messages or references to phone calls you may have made to Mr. Hubbell during that time period, they were all with respect to this antitrust case?
A Totally another case.
Q At any time after you began to represent Mr. Hale, did you ever talk to Mr. Hubbell with respect to the David Hale case?
A No, sir.
Q Or the Madison investigation?
A Never.
Q Or Whitewater?
A Never.

57

Q The McDougals?
A No, nothing associated with David Hale whatsoever. I had another case. It just wasn't appropriate to combine the two and my communication with Mr. Hubbell had started before I ever was aware David Hale had a problem or that I'd be involved in it.
Q Showing you what's marked for identification as number 10749, this is a copy of a message to Judge H. dated July 13. In the upper right-hand corner it says "Randy Coleman"?
A To who now? Judge H?
Q It's a message to Judge H. It's from Randy Coleman. Is that your phone number or was that --
A 374-1107, that's mine, yes.
Q Would that have been about the time you were calling him with respect to the antitrust matter?
A I can't read this. Is this July 13?
Q It appears to look like July 13.
A It looks like July 13.
Q If it was, would that have been the time

58

that you were calling him about that matter?
A Yes, yes.
Q Showing you what's marked --
A I think I called him as early as June on it.
Q Showing you what's marked for identification as Exhibit 10122, a message dated September 1 to the judge from Randy Coleman, same phone number. Would that have been with respect to the same matter?
A Yes.
Q That had nothing to do with David Hale?
A No.
Q Showing you Exhibit Number 10087, this is a message to the judge dated September 3, message from Randy Coleman, same phone number. Would this have been with respect to that antitrust matter as well?
A Yes.
Q This would not have been with respect to David Hale?
A No.
Q Did you know Webster Hubbell prior to his

59

going to Washington?
A I've known Web for 30, 35 years.
Q How did you know him?
A Knew him in college and I think Web played football while I was in law school up there at Fayetteville. Known him in legal circles around town for years. Used to handle a lot of litigation back and forth with him. Known him for years.
Q Was it a business relationship or social relationship?
A It was more business than social. If we saw each other out -- I mean, we knew one another and we were highly acquainted, but, you know, we didn't traffic each other's homes or anything of that sort.
Q Now, I'll represent to you that we have some phone records from Mr. Hubbell's office, one for September 2, 1993 to phone number 501-374-1107. That would be your phone number; correct?
A It was my office number at that time.
Q All right. And do you recall whether or not he called you on that date?
A I couldn't tell you. He and I, after many

60

passes, hooked up for two conversations that I recall, and one occurred somewhere about the middle of September, as I remember, and then one had occurred back in June or July. And I think of all the telephoning back and forth, I'll show you numbers on my sheets here that, you know, are half a minute and such that where we're just, you know, passing like ships in the night and can't get hold of one another.
Q So while you left messages for each other throughout this time period between June and September, you only actually talked twice?
A I think we talked two times.
Q Once in mid-September?
A Once in mid-September.
Q Once in June?
A Once in June, I think.
Q And on neither of those occasions was it with respect to Hale?
A Didn't know anything about David Hale in June or July, and in September just avoided it, didn't talk to him about it.

61

Q Just to be complete in this, do you recall whether you had a conversation with him on September 8, 1993?
A I couldn't tell you the date.
Q Do you recall whether you left a message for him on September 9, 1993?
A I'm sure I did. I remember we were going back and forth on numerous occasions.
Q Do you recall whether you left a message for him on September 13, 1993?
A I wouldn't doubt it.
Q Do you recall whether he called you on September 15 -- twice on September 15, 1993?
A Could have. I wouldn't discount the possibility for sure.
Q Do you know whether you called him on September 15, 1993?
A I'm sure I did. My records will bear out what I did or did not do on that.
MR. GICALE: Off the record.
(Discussion off the record.)
BY MR. GICALE:

62

Q Mr. Coleman, you brought in some telephone records today, and one of those records indicates a conversation August 31 of 14 minutes to 202-205-6360.
A If memory serves me, that is the SBA.
Q That's a call to the SBA?
A Yes. Mark Stevens, who was the attorney at the SBA that I dealt with on the liquidation of Capital Management Services, Inc. I think Mr. Hubbell's number is the 514-9500, as I remember.
Q And so that you had another call with Mr. Stevens on September 13th of '93 for 23 minutes and that was with respect to the liquidation?
A Capital Management Services. They had filed a complaint. I had worked out a deal to avoid Mr. Hale any adverse publicity I could that they would not file their liquidation until Mr. Hale's indictment hit so he could endure it all as one big bitter pill at the same time, and they did that. Then subsequent to his being indicted there on the 21st or 22nd and us appearing in -- at his plea and arraignment, then the SBA filed their receivership

63

and liquidation action of Capital Management, and I had many, many conversations with Mr. Stevens on matters relating to that civil action.

Q Now, did there come a time in August of 1993 that you called William Kennedy?

A Yes.

Q And when was it in August that you called him?

A Well, there again, I don't recall whether I got him the first time, second time or whatever, but I called him -- it would have been about the middle of August, 16th, 17th, somewhere in there.

Q And what was the purpose of your call?

A Well, by that point in time, through conversations with my client and conversations with Mr. Jackson at the U.S. Attorney's office, it appears that there was potential for an investigation which would involve folks other than just my client, and where that was the case it was always my habit to start making contact with attorneys for other people who might become involved to see where everybody stood and what the landscape looked like that

64

surrounded me. That was one reason.

I knew Bill Kennedy.

Q How did you know him?

A Through law practice there in Little Rock. We handled a lot of transactions, cases with each other and his law firm over the years, his and Mr. Hubbell's law firm. I did business with he and Mr. Hubbell, Mr. Foster, Ms. Clinton routinely for many years.

Q Now, why, for instance, did you call Kennedy as opposed to Foster?

A Foster was dead and I knew Kennedy --

Q I'm sorry, I'm sorry, strike that. I'm sorry. Strike that question and answer.

MR. BEN-VENISTE: Can't strike it, Lou. It's there. Suck it up and go forward.

BY MR. GICALE:

Q I'm sorry. August 17, 1993.

A Yes, sir.

Q Why did you call Kennedy as opposed -- tried to discuss it with Kennedy as opposed, for instance, to Hubbell or someone else you'd been

65

working with at the Rose Law Firm?
A Because I wanted to talk to somebody whom I perceived was an attorney for Mr. Clinton that I could have an attorney-to-attorney conversation with. And secondly, I knew Mr. Kennedy, I didn't know anybody else in the White House counsel's office since Mr. Foster's death.
Q So when you eventually talked to Mr. Kennedy, what did you say to him?
A As I recall, our first conversation was very, very brief. You-all probably have got a record that would show how long. I can't remember whether he finally got hold of me or I got hold of him. But in any event, it would probably show a very brief phone conversation wherein we identified ourselves to one another, asked Bill if he was still in the counsel's office, still functioning as a lawyer, and he says he was. And I said well, you've got a client then. And he said I do?
I said I got a client down here. Do you remember a guy named David Hale? And he said he did. What's going on?

66

I said something like there's an investigation, federal investigation going on down here that might well involve both our clients.
Q Now, when you said he had a client, who were you referring to?
A Mr. Clinton.
Q And then what did you say?
A I think he asked me, you got to give me some names or something so I know what I'm dealing with and, you know, what's involved and I told him just very basically that Mr. Hale's office, Capital Management, had been subject to a search and seizure by the FBI the previous month, that records had been taken and the names on some of those records, pretty much some of that list that I just gave you earlier.
Q And to go back, the list you gave me earlier was Madison Guaranty, James McDougal, Susan McDougal, Master Marketing, Clinton, Tucker, Castle Sewer & Water, South Loop Construction, Campobello Realty.
A I doubt I mentioned all those to him, but I'm sure the names came off of that list. I'm sure

67

Madison Guaranty and Whitewater and the McDougals and Clinton and Tucker.
Q So you at least mentioned those names to him?
A I'm pretty sure I did, yes, sir.
Q What else did you say to him?
A Oh, he just asked -- you know, I think he asked something like where the investigation was. I told him it looked like it was just getting started. I told him that I was coming up to Washington sometime the next week and if he wanted to sit down and visit about it, I'd be delighted to meet with him. He said he'd call me back.
Q Did you reference Heidi Fleiss in this conversation?
A Not in that one. I don't think I did in that one. That was another conversation.
Q Did you talk about the fact that Mr. Hale might be indicted soon or you had indications that he would be indicted soon?
A I probably did, yes.
Q And did you indicate it was related to --

68

Hale's indictment was related to an SBA matter?
A Yes.
Q Capital Management?
A Yes. I'm pretty sure I did.
Q Did you say anything else to him at that point?
A Oh, nothing I recall.
MR. BEN-VENISTE: This is still the first conversation?
MR. GICALE: Yes.
THE WITNESS: It was a very brief conversation. You don't have long conversations with Kennedy.
BY MR. GICALE:
Q How long was the conversation?
A Oh, jeez, if it lasted five minutes max, we could probably pull either his phone record or mine and tell whether he called me or I called him. I don't remember which way we hooked up, but it wasn't very long.
Q How did you leave it at the end of that conversation?

69

A I left it that I was coming up the following week because I had to see the SBA, and I'd sit down with him if he wanted to. He said he'd get back to me.
Q What happened next?
A I do not recall whether he called me back almost immediately or called and left a message or exactly how it happened. But the next thing was either he called me back and said he did not wish to meet or he left a message that he didn't want to meet. And to be honest with you, I can't recall, but that was what happened next.
Q Did you have any further conversation with him with respect to this?
A Yes, yes, I did.
Q When was that?
A Day or two later he called me, as I remember.
Q What did he say to you?
A First thing he said was that he had a lady on the line with us, whose name I cannot recall, whom he identified as some sort of ethics compliance

70

officer. She said hello and that's all I recall her saying, or something, some kind of greeting like that. And from that point he asked me to tell him what I could while observing the attorney-client relationship that he recognized I had with Mr. Hale. And I told him well, there wouldn't be a whole heck of a lot I could give him, but I think that's where I used the reference to Heidi Fleiss.
Q What was the reference to Heidi Fleiss?
A Well, if Heidi Fleiss was a madam to the stars or something like that, then David Hale was the lender to the political elite there in Arkansas, because they had opened up Hale's files down there and there were a bunch of loans where he appeared to be doing a lot of favors for a lot of people in political circles down there.
Q What other information did you give him at that time?
A I think he inquired of me if Hale were going to cut a deal, attempting to cut a deal or something of that sort. I told him not at that point. We had been unable to but that Hale was

71

attempting to.
Q What else did he tell you?
A He asked me if it would be alleged there were any face-to-face meetings with his clients, and I said yes. And I remembered something from the other conversation. At the end of that first conversation, he asked me what I wanted him to do, and I told him I didn't want him to do anything, that this investigation appeared to be developing and I was trying to run my traps and see where everybody stood. I said, you know, I just thought you might want to visit with your client. And he said well, maybe clients, plural. And I said well, whatever. That's the way we left the first conversation, until he called me back and said he didn't want to meet. Then we had the second conversation.
Q So at the end of that first conversation, he said it might be clients --
A Yes.
Q -- plural as opposed to one client? So that in the second conversation, when he said are there face-to-face meetings with his clients, again

72

he was talking about the plural?
A As I recall he was, yes.
Q And --
A Or he may have said would it be alleged that there are any face-to-face meetings, and I said yes.
Q What else did he ask you or did he say?
A That was pretty much it. That conversation didn't last very long either. And he ended it by saying he would call me back and maybe not, that I may or may not hear from him, and I didn't.
I want to be sure I answered an earlier question of yours. We kind of went off to another subject before I finished. You asked me why I called him. I gave you one reason. I had another reason for calling him too.
Q What was the other reason?
A My other reason was to kind of try to pump a little provocative information into the pipeline and see if anything ever bled out anywhere down the line.
Q What did you mean by that?

73

A It was my client's belief, having known a lot of these people for a lot of years, that there was more than likely some extensive communication between Little Rock, Arkansas and Washington, D.C. about his case, and we just reached a decision that it might be appropriate just to make a phone call and see if down the road word ever filtered back.

Q Now, when you say "between Little Rock, Arkansas and Washington," where in Little Rock are you talking about?

A U.S. Attorney's office.

Q And where in Washington are you referring to?

A White House, Justice Department or their personnel.

Q Now, did you have any information which led you to believe that those communications were going on?

A Any information? At that point in time, no. Did I? No.

Q As a result of conversations with your client, I take it you determined that there were

74

communications?

MR. BEN-VENISTE: I'm sorry?

THE WITNESS: I couldn't determine that there were communications.

BY MR. GICALE:

Q As a result of conversations with his client, there were determinations that there were contacts?

A I didn't make a determination that there were contacts. I just couched it in terms of a likelihood. If I stated otherwise, I sure didn't intend to. Likelihood or possibility.

Q All right. Going back to the second conversation, did Mr. Kennedy say anything else to you or did he ask you any other questions?

A Not that I remember.

Q Did you say anything else to him?

A Not that I recall.

Q Did you go over the names of the people or organizations or transactions that you had gone over in the previous conversation with him?

A No, I don't recall doing that, no.

75

Q Did you talk about Capital Management and the receivership?
A I don't recall we talked about the receivership, no.
Q Did you talk about the seizure of records of Capital Management?
A I think we talked about that the first time.
Q Did you talk about Whitewater in the second conversation?
A I don't think we talked directly about that in the second one.
Q Is there anything else that either he said or you said in that second conversation?
A I can't recall anything else.
Q What about the woman who was present for the conversation on the other end, did she say anything?
A She never said anything that I recall, other than an initial greeting.
Q And did you ever hear from Mr. Kennedy subsequent to that phone call?

76

A No. No.
Q Did you ever meet with him again?
A No, never did meet with him.
Q Now, after Mr. Hale was indicted sometime in late September 1993, did you have any further discussions with Paula Casey or Michael Johnson or anyone from the U.S. Attorney's office or Department of Justice with respect to a plea disposition?
A Yes.
Q When would that have been?
A There might have been some minor contact, nothing of any great substance, between the date of David's plea and arraignment and later in October. I had worked with Mr. Jackson on some procedural matters associated directly with the case, but he and I had ceased pretty much talking about anything on a plea negotiation at that point in time because it was kind of a fruitless effort with him, as he had told me upfront it would be. So he and I confined our communication to matters that related directly to the case, its trial, postponement, discovery and those sorts of things, until I met with Paula Casey and

77

Michael Johnson again sometime in late October.
Q And what was discussed in late October with respect to a plea disposition?
A I think I gave you some notes that I wrote down that day and gave them a copy of while I was in her office, which probably set out, better than I can recall, exactly what we did because we were not getting along at that point very well.
MR. GICALE: Off the record.
(Discussion off the record.)
BY MR. GICALE:
Q Showing you what's marked for identification as your response, Exhibit 1 in your November 1 response to Joseph Kolinski, chief clerk of the Senate Banking Committee, some notes dated 10-21-93. Are these your notes of that meeting with Paula Casey?
A Yes, and Michael Johnson.
Q In reviewing them, do they refresh your recollection as to what you agreed?
A Well, we didn't agree on anything. This is merely a recitation of what they dictated to me to be

78

the terms under which they would enter into plea negotiations with Mr. Hale.
Q All right. And did they indicate that he must give a full and complete, truthful statement with respect to his knowledge of this matter?
A Yes.
Q That he must provide any and all -- since I can't read your writing, could you go through this for us?
A Sure. "DH," shorthand for David Hale.
Q Number 2?
A Yes, "must provide any and all documents in his possession on matters about which he is questioned or which relate to any issue raised.
"DH must agree to testify before any grand and/or petit jury when USA deems necessary," 3.
4, "DH must agree to make himself available for follow-up interviews when reasonably necessary."
5, "DH must agree to plead guilty to a fraud-related felony (comprehensive-not minimized in terms of dollar amount). Latitude on negotiations -- will not stipulate to lesser amount on present

79

indictment. May ask DH to plead to conspiracy fraud instead of a substantive fraud." And jeez, my own writing fails me. "If" something "other than" -- "if felony other than presently charged, waive indictment by grand jury."

And then 6, "proffer would give use immunity to DH if negotiations break down, does not mean that he could not be prosecuted for acts, the subject of the proffer. Proffer could be used for cross-examination of prosecution for perjury or false statement. Proffer could not" -- I can't read the right column there, "used as evidence of guilt except for perjury of false statement."

7, "if proffer accepted, would make 5K 1.1 or Rule 35. 5K 1.1 at the time of sentencing, Rule 35 after sentencing, matter of timing if DH sentenced before cooperation completed."

8, "will not address any sentence recommendation at this time. Issue to be revisited after proffer. No commitment."

9, "if there is an agreement between DH and USA, no press, a gag."

80

10, "some sums will require more discussion and negotiations from the standpoint of DH, especially items 5 and 7, perhaps 8."

11, "USA will extend this offer until close of business on November 7, 1993. If no agreement by that point in time, any further agreement would be subject to possible additional charges and/or change in nature of charges."

12, "restitution added per phone call from Michael Johnson later on 10-21-93."

So I walked out of there that day with items 1 through 11 that they had dictated to me as the terms, and then they called me and I added an item 12 to that note.

Q And was it left after that meeting that you were to get back to them with respect to this or they were to get back to you?

A I think I was probably to respond to them.

Q And did you eventually respond to them prior to November --

A I think I responded on November 8.

Q On November 8?

81

A Yes.
Q That was your response. Did you have any telephone conversations or meetings between that point?
A I don't think we did, no.
Q Okay. Now, by November 8, Ms. Casey had recused herself from this matter; is that correct?
A I think she did it on November 8, if memory serves me correctly.
Q Or at least that's when it became public, on November 8?
A As I recall, I thought that I had written a letter back to her. I wrote her a letter on November 8. It was number 14 in the package that I gave you responding --
Q All right. But in any event, she did not respond to this package because by that time she had been recused or you had been notified that she had recused herself from the matter; correct?
A Well, as a matter of fact, I delivered this letter, and along about 4:00 that afternoon, she and I -- our offices were in the same building there in

82

Little Rock. Along about 4:00 that afternoon she came up to my office with Mr. Mackay and introduced me to Mr. Mackay. I had heard earlier that afternoon that she was going to recuse herself.
Q And Mr. Mackay took over the matter at that point; correct?
A Yes. Yes.
Q Now, during this time period from the time you began representing Mr. Hale through November 8, you were also having conversations, as you indicated, with some officials from the SBA?
A That's correct.
Q Mr. Stevens; correct?
A That is correct, and others.
Q Who else did you talk to from the SBA?
A Cecelia Seay, who was the court-appointed receiver there in Arkansas. She was based in Fayetteville, Arkansas at that time and at one point Mr. Stevens came to my office on one or two occasions and brought some other attorneys from up here in Washington with him whose names I cannot recall.
Q And did you give Mr. Stevens information

with respect to loans or money, investments of Capital Management that he should look into?
A I gave Mr. Stevens some information.
Q With respect to which transactions?
A Jeez, I couldn't tell you. Mr. Hale and I met Mr. Stevens and his team at the offices of Capital Management sometime in late September. It was after the indictment, shortly after the indictment, at which time the representatives of SBA and Mr. Stevens commenced their inventory and took custody of the records of Capital Management Services.
Q And they --
A Mr. Stevens and I subsequently had some meetings with Mrs. Seay, and I think there were another, oh, two or three attorneys from the SBA involved, at which we discussed some of the loan transactions. I could not begin to tell you. They were numerous.
Q Do you recall whether you discussed Castle Sewer & Water and Madison?
A We discussed Castle Sewer & Water. I

believe we discussed the South Loop loan. I believe we discussed the Susan McDougal Master Marketing loan. There were many others that were discussed.
Q What about Steve Smith's loan?
A I can't tell you for sure. It could have very well come up in the conversation. As I remember, most all of the transactions that were listed by file on the search warrant and records that had been seized by the FBI and U.S. Attorney back in July were discussed. I couldn't begin to tell you, sir. It was very extensive. There may be some correspondence back and forth that would tell us that, but I just can't recall at this point.
MR. GICALE: Off the record for a second.
(Discussion off the record.)
BY MR. GICALE:
Q Now, I would like to go through a couple of things. With respect to Fletcher Jackson, have you testified today to all of the discussions you had with him from the time you became involved in this to November 8, when Paula Casey recused herself?
A I don't think so.

85

Q Have you testified to all the things with respect to plea negotiations, the conversations?
A Yes. I've given you the substance and content of any significant contact I had with Fletcher that I can recall on the subject of plea negotiations, because Fletcher and I just didn't get very far on the plea negotiations.
Q And with respect to Paula Casey, you had the conversation on September 7 and you exchanged some letters. And then you had another meeting in October sometime?
A October and some other isolated phone conversations. That was the substance of our contact.
Q And with respect to Michael Johnson, other than the meeting on September 7, 1993, the exchange of letters and phone calls between September 15 and September 21, 1993 and the meeting on October 21, 1993, were there any other discussions with him with respect to a plea disposition for your client, Mr. Hale?
A Well, no, sir, nothing of significance I

86

can recall. If you'll understand, their office and my office were in the same building. We would see each other going to and from the parking deck every day, or getting in the elevator in the mornings. And, you know, I can't tell you, sir, that there wasn't a time where the subject came up, but I don't recall anything of any significance that transpired about it. You know, I would see Fletcher Jackson every day. I'd see Michael Johnson most days. I'd see Paula Casey a lot of days. You know, there would be a passing reference, I'm certain, but nothing of any significance.
Q Did you have any other conversations with Steve Irons?
A Oh, I've had many, many conversations with Steve Irons.
Q When you first began representing Mr. Hale in August and November 8, when Paula Casey recused herself?
A I only recall the one or two conversations that I had with Mr. Irons early on.
Q And that was where you called him up about

87

a potential plea disposition?
A I freaked out the whole FBI office out there by calling him and doing that. Nobody had ever heard of anyone trying to negotiate a deal with the FBI before.
Q Now, that conversation with him was in August; correct?
A It could have been September. I think it was August. It was early on. I remember that.
Q Did you have any conversations with anyone else in the White House other than Mr. Kennedy?
A About this subject?
Q Right.
A I had two brief phone conversations that I have described with Mr. Kennedy.
MR. GICALE: At this point in time, we'll go off the record.
(Discussion off the record.)
MR. BEN-VENISTE: We're going to take a short break and then Mr. Gicale has graciously consented to accommodate our schedule because of meetings later this afternoon with our clients, to

88

question until we need to leave for that meeting, which will be about 5:00.
MR. GICALE: But Lance will stay on?
MR. BEN-VENISTE: Lance Cole will stay in so that we don't lose any time during the course of that meeting.
(Recess.)
EXAMINATION
BY MR. BEN-VENISTE:
Q Mr. Coleman, let me go back a bit because I missed the beginning of this deposition because I was in the ongoing hearings today. But I would like to spend a little time talking about your prior relationship with the U.S. Attorney's office in Little Rock through your practice. You may have covered some of this so forgive me, but back in 1993, what was the breakdown in your practice between civil and criminal?
A Probably -- let me think and give you as accurate an answer as I can give you.
In 1993, I would say that it was probably about 80 percent, 90 percent civil and the remainder

89

criminal, except at certain times. If I talk over the long haul, that was probably it. At certain times, especially 1993, a lot of my time had been consumed in white-collar criminal cases from the time, oh, '91 to '93 because of the bank and S&L failures in the state of Arkansas and criminal prosecutions arising out of those. I had handled some criminal defense work associated with that. So in '93 it was fairly heavy with other cases.

Q So from '91 to '93, given the climate of the times, you were involved in criminal matters relating to bank failures in Arkansas?

A White-collar type criminal defense work, yes.

Q And had you tried any cases in the interim?

A Criminal cases?

Q Yes.

A Of that sort?

Q Right.

A I do not recall that I did, no.

Q Had you had any prior professional relationship or dealings with Fletcher Jackson?

90

A Off and on over the years, yes.

Q And you knew him to be a career prosecutor in that office?

A He was a career prosecutor. He left my old law firm and went to the prosecutor's office and stayed there ever since.

Q And had you been in the law firm at the time that Mr. Jackson was there?

A We met each other in the door, just about, in the early '70s. I joined, he left.

Q And it was a pretty well-known fact that he had determined to make his career as a government attorney?

A That was very well known.

Q Now, had you had professional dealings with Paula Casey prior to her nomination as United States Attorney?

A In terms of handling lawsuits against one another, anything of that sort, no.

Q Indeed, her background was on the professorial side and with a heavy emphasis on legal clinics for public defender type of work?

91

A Correct.
Q And that was a well-known fact?
A I would agree with that.
Q Was she known to you as a highly political type of person in terms of party politics?
A If I had to put her on a scale, yes.
Q How would you rate her?
A Well, just based on general reputation, I know Paula had worked for Bumpers up here, I think, for a good while, and I knew that she and Gil had been the subjects of various politically related appointments along the line for a number of years.
Q And you knew that she had left Senator Bumpers's staff and had moved back to Arkansas?
A Yes.
Q And had accepted a position at the university?
A I was aware of that.
Q Let me go to the question of when you were first retained by David Hale. Were you retained before or after the search warrant?
A After.

92

Q Did he have counsel prior to the execution of the search warrant?
A No.
Q Did this come as a total shock --
A For purposes of that case, no.
Q Right. So was he aware he was under investigation, as far as you knew?
A Without going into my conversations with him, I think I would generally say no.
Q And after the execution of the search warrant, did you have occasion to learn the genesis of the investigation, how it came to be that he became the focus?
A Some, not totally.
Q And what did you learn?
A I learned that the investigation that resulted in the '93 circumstances had started earlier that year as the result of some referrals from the SBA to the Justice Department.
Q And there was an informant or some person providing information who was involved in that situation that then had information relating to

93

Mr. Hale?
A I never was aware of an informant situation being at the root of that investigation. It was my impression that it came through official SBA channels of their evaluation of Capital Management Services, which led to the discovery of information which resulted in the criminal investigation.
Q Okay. I didn't mean to suggest to you that there was an informant. I thought that was implicit in the answer to my prior question.
So you learned that somehow Capital Management had come up in the course of an unrelated investigation by SBA?
A Well, SBA conducted routine examinations of the various SBIC entities around the country, including Capital Management, and as a result of information gathered during one of those routine examinations, that spawned the criminal. That's my understanding of it.
Q And that was in 1993?
A As I understood, it was earlier in the year of 1993.

94

Q So that having all of that information in hand, Mr. Hale is the object of a search warrant where documents are taken from his place of business; correct?
A Correct.
Q Were they taken from his home as well or just the place of business?
A Place of business.
Q And shortly thereafter, I take it, you were consulted, this got his attention?
A That happened July 20, 21, and I was consulted approximately August 10 or 11.
Q And at that time you had the opportunity to speak with Mr. Hale and to learn as much as you could about the circumstances. What was the next thing that you did after that?
A After what now? I'm not following you.
Q After you were retained by Mr. Hale.
A The first thing I did was I went to see Fletcher Jackson.
Q Okay. Was it at that moment that you decided that you would like to make a deal?

95

A At that point in time, no, but that is always a consideration, and it came up briefly in the first conversation.
Q And how did it come up?
A I think I inquired of Fletcher. He expressed some high degree of confidence in his case against Mr. Hale based on what was on the table at that point in time. Without making any commitment or evaluation of whether he was right, wrong or indifferent -- I didn't know enough to know -- I asked the question about the government's willingness to negotiate.
Q And at that point were you relatively confident that you had a firm handle on what his liability was in terms of what the government was investigating?
A No.
Q So that was kind of an open-ended question?
A I met Mr. Hale for about 30 minutes one day. He came in unannounced, unanticipated. The next morning I met with Mr. Jackson. I had had very little opportunity to prepare or educate myself as to

96

what was going on at that point in time.
Q So it would be fair to say, then, wouldn't it, that your first meeting with Mr. Jackson was to try to find out as much information about this case as Mr. Jackson would be willing to provide you?
A The lawyer that had referred this case to me advised me that an indictment of Mr. Hale was imminent, that he was fast tracked and therefore, it was my objective to meet with Mr. Jackson and to see exactly, as best he could tell me, what was the status of his case, what his timetable was, gee, do you have to do it this rapidly, let's step back and take a look at it and that sort of thing. That was the context of our first conversation.
Q You wanted to buy some time if you could?
A Sure.
Q And who is the attorney who had represented Mr. Hale before or who had referred the case to you?
A Well, a gentleman by the name of Dale Price.
Q Did he stay in the case?
A No, huh-uh.

97

Q Was he a criminal lawyer, a lawyer with criminal experience?
A Mr. Price is a former partner of mine, and yes, he had been a preeminent criminal trial attorney in our area.
Q Now, I'm not going to, obviously, ask you about what happened with the information you got from Mr. Jackson vis-a-vis conversations with your client, but did you then come back to Mr. Jackson --
A Yes.
Q -- and approximately how long a period went by?
A A day, two days max.
Q When did Mr. Jackson tell you his start date for grand jury action was?
A At the first meeting.
Q When would that have been in connection with your meeting with him?
A That was at the first meeting that I had with him on I'll say August 11 or 12, and he told me that it was going to happen -- I think habitually our grand juries return the third Tuesday of the month,

98

and that would be September was when his grand jury was going to meet and he was going to seek the return of an indictment on Mr. Hale.
Q And he had presumably had the opportunity, or would have in the interim between then and the grand jury's meeting, had the opportunity to digest and review the records which had been the subject of the search warrant?
A What he did or didn't do, I don't know.
Q Now, what did you say to him the next day?
A In our first meeting, we had a fairly extensive discussion on timing, do you have to do it this rapidly. Search warrant was just executed July 21. Here we are August 10, 11, you're going to indict him on September 20 or 21. I don't have much time to get my feet wet nor for us to explore any alternatives. Things of that sort.
At that meeting we had a brief discussion about his willingness to negotiate, assuming there was no reason to do that, it just came up in the conversation as it does routinely in those type settings between defense and prosecution, as I'm sure

99

you're aware.
I had known him for a number of years. He told me I didn't know what I was getting into at that first meeting. And I said I've been around the block a time or two, I know what's going on. So I go visit with my client, and without going into all that, I became aware of what I was getting into.
Mr. Jackson and I had another meeting like the next day. This happened in three successive days, as I recall. And I went back to Mr. Fletcher and told him there might have been some validity to his statement that I didn't know what I was getting into.
By that point in time, as I stated to this gentleman earlier, based on the content of the records that were seized in the execution of the search warrant, conversations with my client, I then went to Mr. Jackson because I had a better appreciation of the scope of what was involved and told him that I would like to see if there wasn't some way we could defer the indictment process or waive statute of limitations if he felt like the

100

statute of limitations. Was a problem for him, I told him we would waive statute of limitations.
We discussed alternatives of indict and seal the indictment, anything that would preserve the confidentiality of his investigation of Mr. Hale up through that point in time that would give Mr. Hale an opportunity to participate and cooperate in an investigation of others and other transactions and circumstances, and to attempt to negotiate some sort of negotiated plea to something.
Now, that was the purpose of my second meeting with Mr. Jackson.
Q So that you're saying you were prepared to take a felony indictment, as long as it were sealed? Is that what you're saying?
A That was a possibility that we discussed, among others. I won't tell you here today that we were willing to accept that as a matter of principle, but it was certainly something that was thrown out and suggested.
Q Often attorneys try to test the waters. That's one of the things that if they're experienced,

101

their client is paying for, the ability to outmaneuver the other side if they can. You were trying to cut the best possible arrangement as you were learning the case and learning the amount of evidence that the government claimed to have against your client and weigh that against what your client was telling you. You thought, okay, the circumstances are that this may not be a defensible case from my standpoint. Let's see what I can do. Is that a fair summary of where you were?

A Fair analysis, yes.

Q So as of the second meeting, you put on the table, well, if my client can provide you with cooperation, and I'm telling you that he's got some stuff to cooperate on, I would like you to in return give him immunity. That was your first position?

A That was discussed, yes.

Q How long was it until you fell back to a position that your client was willing to plead to a misdemeanor?

A It is my memory that there were several different alternatives discussed at my second meeting

102

with Fletcher Jackson as to what could be done to facilitate an arrangement between he and the government. There was discussed a waiver of statute of limitations, misdemeanor, seal an indictment.

There were several things discussed at that point in time.

Q So you're saying you may have already moved by the second meeting from immunity to we'll take a misdemeanor?

A I am not telling you that I made that as a proposal, formal proposal. I am telling you that there was a discussion along the lines of, Fletcher, what if we did this, what if we did that.

Q So I take it by the fact you moved to misdemeanor, he wasn't red hot to grant you immunity in return for some cooperation that you were talking about?

A As it turned out, he was not red hot to offer me anything --

Q Well, we'll get to the --

A -- at that day, at that meeting.

Q We'll get to everything else in due course,

103

but it seems to me if you put misdemeanor on the table, immunity kind of got laughed off the table pretty soon, you didn't feel that was going to be a viable alternative?

A No, I didn't get a response. It wasn't laughed off the table. It just wasn't responded to because he told me he wasn't going to do anything, that it was not his decision to make and he wasn't going to do it.

Q Didn't he tell you that he wanted a felony plea as a minimum from your client at some point?

A That was virtually always the position of that office definitively from September 7 forward, not prior to, because he and I never got to that point.

Q Well, so you kept telling him things that you were prepared to do and he told you what he was going to do was indict your client?

A That is correct.

Q And you didn't offer him unqualified cooperation, my client will walk into the machine guns and take whatever hits he takes, but he wants

104

you to have this information because he's sorry for the bad things he's done and wants to demonstrate that remorse by being fully cooperative with no strings attached?

A I never made an unqualified offer of cooperation on behalf of my client.

Q So let's move to the 7th of September. You've got a couple of weeks before the grand jury is going to sit, and it's your understanding they are going to return an indictment against your client; correct?

A Yes.

Q Did you ever research and present the kind of a misdemeanor you thought your client could plead to under the fact circumstances?

A Did I present to them a charge? No.

Q Had you had one in mind at that point?

A Specifically as it related to Mr. Hale, no.

Q Well, you know, there are misdemeanors left in the U.S. Code, although they become more and more difficult to find.

A Yes, they are.

105

Q I'm just wondering whether you had identified any kind of misdemeanor that would remotely cover the conduct that the government said was unlawful?
A At that point in time, no.
Q Okay. And did you at any point in time prior to his indictment propose a specific misdemeanor?
A No.
Q So --
A We never got that close.
Q By the 7th and into the month of September --
A I will say in my experience that if the prosecution and defense get to a meeting of the minds on misdemeanor, I have had experience in other cases to where we both go to the book and find a misdemeanor if that's what we want to do.
Q Try to get one of Cinderella's stepsisters to shove her foot into that misdemeanor slipper, if you can?
A There are records keeping misdemeanors,

106

there are all kinds of misdemeanors.
Q In that sometimes if the occasion warrants, people can be very creative in making the offense fit into some kind of a lesser charge. Is that what you're saying?
A That can happen.
Q In this case it didn't happen, as we know?
A Didn't happen.
Q You were told that bottom line your client's conduct in the eyes of the U.S. Attorney's office was serious and warranted a felony plea?
A That was their position.
Q Now, at that point or at some point thereafter, you called Mr. Irons on the telephone?
A Correct.
Q Had you known him previously?
A No.
Q But you knew that he was the FBI agent who was involved at least in some aspect of this case by reason of his involvement in executing the search warrant, I presume?
A Yes.

107

Q What did you say to Mr. Irons?
A I told Mr. Irons that basically, the U.S. Attorney's office was riding like the headless horseman and I got no clear definitive response from anyone. Even Fletcher Jackson had told me in one of our meetings when I asked him if he refused to even make a decision or to discuss it with me, whom should I go to, he mentioned the FBI. And he said you can go talk to them. It's unusual, I'd never done it before, but I thought why not.
Q Now, do you recall approximately when you had this conversation on the telephone with Agent Irons?
A It would have been late August, as I recall.
Q And in that regard, did you say I would like to come in and proffer my client to you, you listen to him, you make up your mind?
A I'm sure that the terms were used that I would like to find an avenue to negotiate some sort of deal for Mr. Hale.
Q So rather than the approach that I

108

suggested --
A I have no memory of using exactly the approach that you suggested. There are probably elements of -- you know, as you know from years of practicing law yourself, it's not a clear cut, distinctive process like that.
Q You made known that your client had information to give?
A Yes, sir.
Q And you told Agent Irons, if I understand from other material we've seen, that you were dissatisfied with the approach that the U.S. Attorney's office had taken, which was by that point you're going to have to plead to a felony, and if you want consideration for cooperation, you're going to have to make us a proffer?
A The U.S. Attorney's position was before it would be, in essence, discussed any further, Mr. Hale had to enter a plea of guilty to a felony charge of some type. We would make our proffer and then we would determine what that was worth.
Q So essentially they were saying, look, this

109

is felony conduct, we are not buying a pig in a poke, we're not going to make a deal before we learn what the information is. Fair summary?

A Well, it depends on what time frame you're talking about.

Q At the time you talked to Agent Irons.

A At that point in time, I'm not sure it was even that well defined.

Q Well, Agent Irons, if I understand, told you look, I'm with the program, with the U.S. Attorney's office, my view is that your client is going to have to plead to a felony and if you want any consideration, you're going to have to make a proffer, you're going to have to let us know what your client is talking about?

A I recall Mr. Irons telling me that he thought my client had some serious problems and that he was going to have to plead to a felony before anything would be done. That's what I recall.

Q So you didn't make an offer to Agent Irons that said in substance, well, let me tell you what my guy is talking about, let me make him available or

110

let me tell you what he's got to say?

A No.

Q Now, time goes by --

A He didn't encourage me to do that because he did not feel like he was the one to make that kind of decision or to receive that kind of proffer in that setting, as I recall.

Q Well, he would not agree to your terms, your preconditions, for receiving a proffer? That's fair to say?

A I don't know that we ever got into a bargaining or negotiation on that point. What I read his reaction to be was this is outside the scope of my job, and that would have to go through the U.S. Attorney's office.

Q Now, at that point I think Mr. Gicale asked you whether you knew where the Department of Justice made its headquarters and how to make a phone call up here and how to visit if you were so inclined. I take it you did not seriously consider leapfrogging the U.S. Attorney's office in Little Rock and coming up to Washington to talk to career attorneys at the

111

Department of Justice about whether they would have a different take on the situation than Little Rock U.S. Attorney's office was providing to you?

A Did I consider that as a possibility?

Q Okay.

A Did I consider it at all?

Q Yes.

A I can't say it wasn't considered.

Q Considered and rejected? Obviously not favorably acted upon.

A Considered and deemed that it would be ineffective.

Q Now, had you had any contact over the years with the professional core at the Department of Justice criminal division, by which I mean the people who have been here for decades through all Republican, Democratic Administrations as career Department of Justice executives?

A I do not believe that I have.

Q Did you know that such individuals existed as a life form up here?

A I gathered that there would be individuals

112

who would have existed as a life form like that up here, as they did in Little Rock, Arkansas.

Q And you did not think that that was a feasible or practical or viable alternative to the stalemate of your negotiations with Little Rock?

A No.

Q Tell me, if you would, how it came to be that you got in contact with Jeff Gerth at The New York Times.

A I knew that Mr. Gerth had done some spadework on real estate up in north Arkansas on the Clintons back in '92 and from that, figured he would be a source that would be a little bit ahead of the power curve in terms of education.

Q When did you determine that you would contact him?

A Sometime a week or so after my September 7 meeting with Paula Casey and Michael Johnson.

Q And if I heard you correctly earlier, you stated that you and your client determined that if you were going to get indicted, that the best defense would be a good offense, and you would get your story

out through Mr. Gerth?
A Basically.
Q How long between the time that you first contacted Mr. Gerth did you meet with him?
A Within the next day or two.
Q And when did that meeting take place?
A Well, I would say that that would have been sometime right around the middle of September.
Q And did the meeting take place in your office or where did you actually meet?
A In my office.
Q Had you established some ground rules before the meeting?
A Yes, sir.
Q What were those ground rules?
A Basically that it would be confidential in terms of the fact that -- well, in fact, I don't think there was. I don't think there were any real hard and fast ground rules set for that.
Q Who was present at the meeting?
A Mr. Hale, Mr. Gerth and myself.
Q Was Mr. Gerth allowed to tape record the

meeting?
A He didn't tape record the meeting.
Q Did he ask to?
A I don't recall him asking to.
Q Took notes?
A Took notes as far as I recall.
Q And you didn't restrict him in that regard?
A No, sir.
Q Did you take notes?
A No, sir.
Q And what time of day did you get started?
A I don't recall. Sometime midmorning, close to noon.
Q And had he come in the night before?
A I don't recall. I think he came in that morning.
Q And how long did he stay in town that time, do you recall?
A I have no idea.
Q So you started around noon, did you say?
A Sometime around that point in time, yes.
Q And how long did you go?

115

A Most of the day.
Q And what time did you break, do you recall?
A I don't have any idea.
Q Did you have dinner together?
A No.
Q Did you have sandwiches brought in or did you start afterwards?
A I don't recall.
Q Were there any restrictions on Mr. Gerth asking Mr. Hale questions?
A I don't recall whether there were or not.
Q And do you recall at any point your saying to Mr. Gerth that's off limits, you can't get into that?
A Might have been an area or two.
Q Do you recall any?
A Not as I sit here today, no, sir.
Q Nothing that stands out in your mind?
A No, sir.
Q And did Mr. Hale have documents with him?
A I don't recall whether Mr. Hale had any documents with him at that point in time or not. I

116

don't think he did.
Q Did you have documents in the office for Mr. Hale to use?
A I don't think I did, no, sir.
Q Did Mr. Gerth request to see any documents?
A At that point in time, I don't recall whether he did or not.
Q Did you see him again after that first meeting?
A Did I see him, yes.
Q When did you see him again?
A I don't recall. It would have been later that month, I suspect.
Q Did he make arrangements or did Mr. Hale in fact, see Mr. Gerth again after that first meeting in mid-September?
A Did Mr. Hale?
Q Yes.
A Yes.
Q When did he see him?
A Later in September.
Q After the indictment or before?

117

A I don't recall. Probably after.
Q Was that by prearrangement through you?
A Yes.
Q Was there a requirement as part of the ground rules, if there were any ground rules, and maybe this refreshes your recollection on that point, as to whether Mr. Gerth could contact Mr. Hale directly from this point?
A I do not recall. There came a time where Mr. Gerth and Mr. Hale communicated directly.
Q Do you recall when that was?
A I sure don't.
Q But was it roughly in the same time frame?
A I don't think so. I think that came later.
Q Now, your intention was to try to save Mr. Hale his law license if that was possible, part of your initial strategy in dealing with the U.S. Attorney's office; is that correct?
A That was a consideration.
Q So the distinction between felony and misdemeanor might well involve whether Mr. Hale would lose his license to practice law and might also

118

implicate any length of time that he might spend in jail; correct?
A Obviously there is a possibility of a distinction between the time you would spend in jail, felony versus misdemeanor.
Q Were there any considerations other than the ones I've mentioned in the equation felony versus misdemeanor?
A Mr. Hale's ability to retain his judgeship.
Q Did you think that was really in the picture?
A If you don't ask, you don't receive.
Q That's a pretty optimistic type of --
A It's easier to come down than it is to go up.
Q Do you use the term down in Little Rock "chutzpah" very much?
A I've heard it utilized.
Q Would it have been feasible for Mr. Hale, if he had pled to a misdemeanor count down in Little Rock, to retain his judgeship?
A Possible.

119

Q Okay.
A Not probable, but possible.
Q You'd have to find --
A Certainly went more to his law license.
Q You'd have to find a pretty benign misdemeanor, in my view. I might learn something from you about this.
A Well, you may. But you don't ask, you don't get it.
Q Okay. So law license, judgeship and length of incarceration. Was there anything else in the mix?
A As far as impact on Mr. Hale?
Q Well, the distinction between misdemeanor and felony, obviously, on Mr. Hale.
A The degree of confidence or trust that Mr. Hale had in the utilization of information that he might be able to provide was a consideration.
Q Is that in the mix between misdemeanor and felony or is that just a general concern that he had in connection with any cooperation agreement he might enter into?

120

A That was a consideration that permeated the entirety of the thought process at that point in time.
Q Now, there wouldn't be any way, practically, to know how the U.S. Attorney's office or the FBI would follow up on the information until he provided the information. That's fair to say, isn't it?
A I don't know that there is any way to know what any investigative authority is going to do with the information that a client provides. That is something that is developed in the negotiation process and is ultimately arrived at as a degree of whatever you feel the trust and commitment to be, by the prosecutor.
Q Well, it's also, at least in my experience, a function of how good the information is and how much it warrants committing resources to. Wouldn't you agree with that?
A The quality of the information has a degree of impact on what the prosecution does with it and how it's regarded by the court at sentencing.

121

Q So at this point in mid-September, Mr. Gerth has met with Mr. Hale and you and there are no inhibitions on what he might do with the information, but did he tell you what he was going to do?

A Not that I recall.

Q Well, what was the strategy, from your point of view, in terms of getting your side of the story out, since that was the reason why you had contacted him, you wanted to be able to make some kind of preemptive strike?

A To attempt to preserve some degree of credibility for Mr. Hale for whatever might lie down the road so that by the time the information that Mr. Hale had became public or was used in some fashion, Mr. Hale would be something other than merely a convicted felon.

Q Now, it has come to our attention that Mr. Gerth contacted an individual at the Department of Justice in Washington following his meeting with Mr. Hale and provided that individual with certain information that he had received, presumably in the

122

meeting that you have described for us. Did he tell you that he was going to contact an individual in the Department of Justice?

A No.

Q Mr. Hale also contacted -- I'm sorry, strike that.

Mr. Gerth also contacted an individual in the Little Rock FBI office following his meeting with Mr. Hale. Did he tell you that he was going to do that?

A No.

Q Did he tell you after the fact that he had contacted either the Department of Justice in Washington or the FBI in Little Rock?

A I do not recall that he did. I do not recall that he told me that he contacted anybody at the FBI in Little Rock. I don't recall him telling me he contacted anybody at the Justice Department up here.

Q Did, to the best of your knowledge, Mr. Hale hold back any information when he met with Mr. Gerth?

123

A There were probably areas that were not discussed.
Q Do you recall any specifically?
A Not as I sit here today.
Q Was there an arrangement between you and Mr. Hale that he would withhold certain designated areas?
A Well, without going into what Mr. Hale and I discussed, the end product of it would be that, as we say down in our part of the country, you got to save something for the wedding, assuming there is one.
Q Did you have a concern that Mr. Hale providing all of this information to Mr. Gerth in your presence might somehow interfere with any later claim you might wish to make about attorney-client confidentiality?
A Yes, sir.
Q And do you feel that there is any area of attorney-client confidentiality left on substantive matters for Mr. Hale?
A At this point, given his cooperation, I

124

can't imagine what in the world it would be.
Q I agree with you.
A He's more the government's than mine.
Q Do you still represent Mr. Hale?
A I remain on the record as his attorney, yes.
Q Now, clearly you were unable to reach agreement prior to the time -- on a disposition of the charges against Mr. Hale prior to the time that a special attorney from the Department of Justice was designated to assume responsibility for that matter.
A Yes, yes. I didn't realize you were through with your question.
Q You then began to have plea negotiations with Mr. Mackay from the Department of Justice; correct?
A Began to, yes.
Q And do you recall how long Mr. Mackay was in the picture?
A From November 8 to sometime around the middle of January of 1994.
MR. GICALE: Off the record for one

125

second.
(Discussion off the record.)
BY MR. BEN-VENISTE:
Q From the time, roughly two months, that Mr. Mackay had responsibility, is it correct that you were unable to reach a plea agreement?
A Correct.
Q Now, Mr. Mackay removed certain prerequisites that you had objected to in your dealings with the U.S. Attorney's office; isn't that so?
A What do you mean? I don't follow your question.
Q Well, one of the things you wanted the U.S. Attorney to do is to have an open mind and not be so all-fired sure that come hell or high water, Mr. Hale was going to have to enter a plea to a felony; correct?
A I remember Mr. Mackay telling me that he would keep an open mind.
Q And didn't he put that in writing, as they say in telephone wars nowadays? He sent you a letter

126

and said that?
A I think he sent me a letter to that effect. If I got it from him, I gave it to you.
Q But you did not make a proffer to Mr. Mackay?
A No, sir, I didn't.
Q And this was at a point well after you had made Mr. Hale available to The New York Times for all intents and purposes?
A Yes.
Q And can you say why it was you were unwilling to make a proffer to Mr. Mackay?
A Well, basically, you do what your client wishes.
MR. GICALE: Again, I'm going to object.
THE WITNESS: Are you asking for my analysis of that? As one conducting the negotiation?
MR. BEN-VENISTE: Yes.
Do you have a problem?
MR. GICALE: My objection is if it gets into certain client privileged --

127

THE WITNESS: I don't mind answering that question.
MR. BEN-VENISTE: You're asserting the attorney-client privilege for Mr. Hale?
MR. GICALE: No, no -- but off the record.
(Discussion off the record.)
THE WITNESS: I wrote Mr. Mackay a letter sometime in December, as I remember, telling him what my position was.
BY MR. BEN-VENISTE:
Q Now, my initial question was, having made your client available to The New York Times, having heard from Mr. Mackay that he would keep an open mind on the areas that you objected to, which was principally that he'd have to plead to a felony, Mr. Mackay was telling you well -- I mean, listen, I'll make up my mind after I hear what he's got to say, what was the impediment to you taking Mr. Mackay up on his offer?
A The impediment, chiefly, I think I set out in a letter to him in December, which I viewed as an ongoing part of our ongoing negotiations, that if we

128

could establish some parameters that he would consider on recommendation for sentencing, things of that sort. I think Mr. Mackay's word to me was let's take the wrapper off the package and take a look at it.
And I think my response to him was, Mr. Mackay, when we've taken the wrapper off all the package and looked at it, you know, could you give me an idea if you like it, what you might do. That's where Mr. Mackay and I sort of were, as I recall, when he exited the picture.
Q So you wanted something more specific from Mr. Mackay than I'll keep an open mind, I'm not wed to a felony?
A And my client wanted his assurances that the decision as to the utilization of information and what would be done with it, that Mr. Mackay was pretty much independent, as far as that went, of any other influences and I think I had requested something of that sort from Mr. Mackay also.
Q Well, let's see. Mr. Mackay in his letter to you of December 15, in his last paragraph, said

129

"finally, we wish to emphasize, as we did in today's meeting, that we come to this case with an open mind. We remain interested in obtaining by proffer," and that's set off in commas, "any information your client has to offer and welcome any ideas you have for a mutually beneficial resolution of this matter."

Then you responded to him --

A Let me see his letter if I could.

Q Surely.

(Witness reviewed the document.)

You've had a chance to review your correspondence?

A Yes.

Q Please feel free to do that at any time during this deposition. This is not a memory test. If you have a document that you think will be helpful to you, please consult it.

So I've read to you from Mr. Mackay's letter to you of December 15. Did you respond to him in writing?

A Apparently Mr. Mackay and I had some

130

additional communication, because I wrote him on January 13, '94 and I had gotten another letter from him January 3, '94 and I had met with him on January 4 '94. When I reviewed my files I did not apparently pick up or have a copy of his letter to me of January 3, 1994 --

Q Would you like to see it? We have one here.

A -- or I would have included it in here.

Q I'd be pleased to show you ours.

(Witness reviewed the document.)

A All right.

Q Now what do you recall?

A Give me a question.

Q Okay. He gave you the opportunity by his letter to make your proffer and he would, on behalf of the Department of Justice, maintain an open mind as to whether or not a felony plea would be required.

A And I responded to him. Apparently he and I had a phone conversation on January 4, or a meeting on January 4, the content of which, as I sit here

131

today, I do not recall, and then I responded to him on January 13 by letter.

Q And he wrote you a letter on the 3rd of January?

A He wrote me a letter on the 3rd. Apparently he and I met on the 4th and I wrote him a letter back on the 13th of January.

Q Okay. So your response to all that had gone before was summarized in your letter of January 13?

A Basically that was it, yes, sir.

Q Now, your concern, if I understand your January 13 letter -- and I'm clearly paraphrasing at this point and not quoting -- is that once Mr. Hale made a proffer, it would still be up to the government to decide how much credit to give him for making that proffer and that the government might still choose to prosecute him for felony?

A He was already being prosecuted for a felony.

Q Choose to continue to demand the felony plea or go to trial. I mean --

132

A Sure.

Q That was an option for Mr. Hale, go to trial if you want to?

A Absolutely.

Q I'm sure somebody along the way pointed that out to you.

A Didn't have to point it out to me.

Q Well, they usually point it out to you anyway, even if they don't have to. That's been my experience. If you don't like what we're putting on the table, just go to trial.

Did you have a trial date?

A We had one. Had a couple of them, as I recall. One was the standard you got 30 days from the date of your arraignment to defend a case we've been working on for months, and then I think we --

Q That's characterized as an important right of the defendant to a speedy trial?

A To a speedy trial that few defendants ever want. And then we had another trial date.

Q When was the other trial date?

A I can't remember. It was sometime -- I

think it had been set in March or something of '94, as I recall.
Q So it was coming up by the time you're having these conversations in January?
A Well, it was what it was. I had a trial date sometime around the end of March in 1994 and it was January of 1994.
Q So you pretty much needed to know if you were going to have to prepare for trial or whether you'd be able to work out some kind of arrangement?
A You'd always like to know that.
Q And so what did you hope that Mr. Mackay was going to be able to provide you in response to your letter of January 13 that would give you sufficient comfort in going forward and making your proffer as he was requesting you to do?
A That he would come back and give us at least a range of possibilities that would be considered, a floor and a ceiling. If he liked what we said or he didn't like what we said.
Q And you wanted something in that regard different than what would be more or less standard

under the sentencing guidelines if you were to get a 5K letter?
A You were looking for a 5K letter if you were going to plead guilty to a felony. You would want to know it before you pled instead of relying on somebody's good graces to give you a Rule 35 after you'd pled.
Q And you didn't think you had that on the table at that point?
A Wasn't sure.
Q Was that the only thing you wanted was a 5K letter, if the -- if you were to get a 5K letter, it would be on the basis of the prosecutor saying --
A That was one of the things I wanted.
Q -- we have evaluated the cooperation and we find that significant assistance has been provided. Isn't that what a 5K letter says?
A 5K letter says that we are requesting a downward departure from the sentencing guidelines based on substantial cooperation.
Q But you wanted a commitment that they would make such a request for a downward departure based on

135

substantial cooperation prior to the time that you were to make the proffer?
A I wanted that to be put on the table as a very viable alternative, if they accepted what he had to say.
Q Well, did anybody say it wasn't on the table?
A Nobody said it was.
Q Well, Mr. Mackay seemed to have been saying that in his earlier letter that he's got a completely open mind whether he's even going to require a felony plea.
A "Open mind" is not defined.
Q Well, "on the table" means "open mind," doesn't it?
A "Open mind" means he'd think about it, to me.
Q So you wanted something more than he'd think about it?
A Yes, sir. You would, too.
Q Well, I guess that's where you and I part company. You know, I feel it's my job to evaluate

136

the cooperation of a client under these circumstances and then based on that you got to bite the bullet and say look, based on your experience with prosecutors, you're going to advise your client to do what's in his interest.
A I guess you and I could have a philosophical discussion about that, but from my standpoint, and I'm going to negotiate a deal, I'm going to want some boundaries in which I am going to operate, up side, down side, depending upon what you think of my information and what you do with it.
Q Okay. Let's fast --
A And I didn't get any of that.
Q Let's fast forward a little bit. It's clear that Mr. Hale entered a plea of guilty to two felonies rather than the one felony from the days of Fletcher Jackson and Paula Casey; correct?
A Yes, sir.
Q And did he make a proffer before the plea agreement was accepted?
MR. GICALE: This I will --
MR. BEN-VENISTE: I'm not asking for the

137

substance of it.
MR. GICALE: This really -- we're getting into territory that --
MR. BEN-VENISTE: If you don't want to say.
THE WITNESS: You guys determine what the -- put this on the record. You guys determine what the boundaries are and I'll answer the question. I'm not going to until I know what I'm getting into.
MR. BEN-VENISTE: If Mr. Gicale objects to it going into the record --
MR. GICALE: It's beyond the scope and --
MR. BEN-VENISTE: Okay, all right.
BY MR. BEN-VENISTE:
Q Have in mind I have not asked for the substance of what he provided in any proffer that he may or may not have provided in connection with his plea agreement.
A Mr. Ben-Veniste, to sum the whole thing up, obviously the pot was not right until a certain point in time for Mr. Hale's cooperation.

138

Q A poker term, if I'm not mistaken. I'm not quite sure I'm familiar with that game.
A I'll bet you are.
Q Is that the game where two of a kind are good, but three of a kind are better?
A Something like that.
Q I'll have to play that sometime.
A A babe in the woods.
(Laughter.)
Q Let's turn to the phone call to Mr. Kennedy. You have stated that with respect to your telephone tag and eventual hookup with Webster Hubbell, that that in no way had anything to do with your representation of Mr. Hale, and I'm not going to go into that with you, on your representation.
With respect to your call to Mr. Kennedy, it is your testimony, and I listened to that part of it, if I understand it correctly, that it is your regular practice in connection with white-collar criminal representation of your clients, to contact others who may have some connection to the case early rather than later?

139

A Yes, sir.
Q And I want to be very clear on one point, and that is whether you had the expectation that Mr. Kennedy was going to do something helpful to your client as a result of you making that telephone call.
A No, sir. Well, let me rephrase that. By "helpful," you define your term there and I'll maybe give you another answer.
Q What did you hope Mr. Kennedy was going to do?
A I had no idea what Mr. Kennedy was going to do. If Mr. Kennedy might impart to me some awareness, prior awareness of what was happening with Mr. Hale and Capital Management in Little Rock, Arkansas, that might have been helpful.
Q How would it have been helpful to you if Mr. Kennedy had known something about this investigation involving your client?
A It might have confirmed some of Mr. Hale's suspicions, that there were some folks up here that had some prior knowledge of what was happening to

140

him.
Q Well, Mr. Kennedy, if I understand you, did not provide such confirmation?
A Mr. Kennedy did not.
Q So what else did you hope Mr. Kennedy would be able to do that would either help your client or answer some questions that he might have asked you?
A At that point in time, what did he do? He didn't do anything.
Q No, I didn't ask you that. I asked you what you hoped he might do, if anything. You've mentioned one thing, which was of an informational interest to your client.
A On that particular point, I don't know that I had any other expectations.
Q Well, the other thing that you mentioned, and I guess that was with respect to the second phone call, was that you were laying some kind of a trap to see whether some information that you imparted to Mr. Kennedy in your conversation with him would somehow come out of another part of some other pipeline that you or your client presumed existed; is

141

that correct?
MR. GICALE: Objection. I don't think he said "trap" anyplace in his testimony.
THE WITNESS: We were dealing -- am I to answer now?
BY MR. BEN-VENISTE:
Q Yes.
A I don't know that I would call it a trap, but I meant exactly what I said in my earlier testimony, which was to put some information out in the stream and see what happened with it.
Q What was the information you put in the stream?
A The fact that there was an investigation here in Little Rock, Arkansas that might involve both our clients, and a little bit about the nature of it in terms of who was involved.
Q Well, I didn't mean to imply something pejorative in the sense of setting a trap, and I guess I got that from your earlier mention in the context of Mr. Kennedy that you were running the traps, but --

142

A I used that in the context of I generally try to survey the landscape of parties who are involved or potentially may be involved from whatever standpoint when you have got a situation like this.
Q Well, what you wanted to do, if my notes of your earlier testimony are accurate, was you wanted to put some provocative information in the pipeline and you wanted to see whether anything filtered back?
A Yes, sir.
Q And did you get anything filtered back out of that pipeline?
A Directly, no.
Q And it always occurs to a lawyer that when there is a modifier in front of that no, that one should ask a follow-up question. So what did you get back?
A Was there anything that came directly out of that conversation? No. Was there anything that came out of the entire circumstance? I thought it was fairly significant when Paula Casey brought Mr. Mackay up to introduce him to me the afternoon of November 8, and I thought it was fairly significant

143

when Mr. Fiske was appointed January 14 of 1994.
Q You think all of that resulted from your mentioning Heidi Fleiss to Mr. Kennedy?
A I don't know whether it did or not. It was the overall objective of Mr. Hale to have somebody independent to deal with in his case, and that's where the whole thing was headed.
Q Well, weren't there some other ways of doing that? Let me withdraw that question.
I must say that that seems somewhat attenuated to me, but I could well be wrong about that. Others will decide.
But in any event, you didn't hear back directly from the White House following your second conversation with Mr. Kennedy?
A No, sir, I did not talk to anybody else but Mr. Kennedy on two occasions.
Q And if there was any notion that someone might be affected in an untoward way and misinterpreted your intent in this telephone conversation to put Mr. Kennedy on notice of the facts that you provided to him, and by that I mean

144

any attempt to interfere with the case against Mr. Hale for fear that Mr. Hale would somehow then implicate the President or the First Lady, that would have been disposed of with the indictment of Mr. Hale on felony charges?
A I don't follow your question, sir. You lost me there someplace.
Q Well, some people undoubtedly are going to make the suggestion, Mr. Coleman, that by calling Mr. Kennedy with this information, Mr. Hale may have wanted to influence the investigation in a way favorable to him.
A No, because Mr. Kennedy asked me if there was anything I wanted him to do, and I told him no.
Q Well, people may take that a step further and think that maybe you wouldn't be so direct in such an approach if it was your intention. I'm not saying it was. Indeed, I'm prepared to credit your explanation for your motive.
A That was not the objective and never was. Mr. Hale's concern was that it was coming in the other direction.

145

Q Someone might question, and I'm sure, given the level of conspiratorial interest in what has generically been described as Whitewater, that someone undoubtedly will take the view that the call to Mr. Kennedy was made in the hope that your client thought that if the White House realized that he might have something bad to say about the President, that maybe his problems, Mr. Hale's, would go away. Can you see where somebody might come to such a conclusion, even if it might be erroneous?

A Well, you may draw whatever conclusion you would like, sir.

Q I'm not saying that's my conclusion. I said --

A Anybody else's -- it's not yours, then anybody else's is speculative, as far as I'm concerned.

Q So I'm just providing the explanation to you in the context of my earlier question, and perhaps we could have that read back then.

(The reporter read the record as requested.)

MR. GICALE: I --

146

MR. BEN-VENISTE: I meant the question before that.

THE WITNESS: If I were a lawyer, I would object to the speculative nature of your question. It's hard for me to answer that.

BY MR. BEN-VENISTE:

Q Let me come back another way and ask you this. If some person had thought that there was an attempt to intercede on Mr. Hale's behalf, assuming the President of the United States could affect a criminal investigation that was headed toward indictment in Little Rock, Arkansas because of some concern that the target of that investigation might provide information harmful to him, if prosecuted, then the return of the indictment against Mr. Hale would seem to answer that kind of speculation, would it not?

MR. GICALE: Again, I would object. What happened happened and what he knows and what his intent I think is relevant. I don't think what someone else would conclude is relevant here.

MR. BEN-VENISTE: You may answer that

147

question if you remember it.
THE WITNESS: It's hard for me to answer that question.
MR. GICALE: I would instruct him not to answer because --
MR. BEN-VENISTE: You can't instruct him not to answer anything, Lou, because you're not his lawyer unless I missed something that happened earlier in the deposition. Are you representing Mr. Coleman?
MR. GICALE: No, I don't, but I represent the Committee and we can go to the chairman and talk to him about the question.
MR. BEN-VENISTE: Why don't you go to the Committee --
THE WITNESS: I don't want to sit here and argue all night. You're asking me would the fact that somebody is indicted be the answer in and of itself as to whether or not someone in control of the Justice Department was or was not taking some influence over Mr. Hale's case, and I can't answer that. I don't know that. I don't know.

148

BY MR. BEN-VENISTE:
Q All right. That's the answer.
A Impossible for me to know.
MR. BEN-VENISTE: Why don't we take five minutes.
(Recess.)
EXAMINATION
BY MR. GICALE:
Q Mr. Coleman, as we already indicated on the record, Mr. Ben-Veniste had a meeting that he had to attend and so we interrupted my earlier questioning of you so he could have an opportunity to do that. And I would like to just follow up on some questions that I had asked you before. First of all, when you called Mr. Coleman on August 17, do you recall whether or not --
A Kennedy?
Q I'm sorry, I said Coleman. Mr. Kennedy -- strike that.
Mr. Kennedy on August 17, 1993 and you left a message, did you indicate to whoever took the message that it was fairly urgent that he speak to

149

you?
A I don't recall doing that.
Q When you talked to him the second time, did he indicate that they would have no involvement with you or words to that effect?
A Come again now, the second time that I talked to him, did Mr. Kennedy indicate he would have no involvement with me?
Q Right.
A I don't recall anything like that being said.
Q That would have been the time when you had someone else on the phone?
A Yes. I don't recall that.
Q Do you recall him telling you --
A I recall him telling me that I may call you back and I may not, and he never did. That's my memory of it.
Q Do you recall him saying to you he wasn't going to interact with you anymore?
A No. What I remember him saying, his last words to be, were that I may call you back and I may

150

not.
Q Now, just to clarify an earlier question, at the time you called Mr. Kennedy in August 1993, you knew him from your days of practice in Little Rock and you knew that he was working at the White House. By this point in time, Mr. Foster had died as of July 1993. Did you know anyone else working in the White House at that point?
A Yes.
Q Who else did you know?
A David Watkins.
Q David who?
A David Watkins, Mack McLarty, Carol Rasco. There were a host of folks I'd known for years.
Q Did you know the Clintons?
A I knew the Clintons.
Q What was your relationship with these people? Was it business or social, starting with the Clintons.
A I had no social relationship. I knew Bill Clinton when he was governor. I first met him at my old law firm when he used to come over, oh, back in

151

'74, '75 after he'd run for Congress against Hammerschmidt and had lost that race and came to Little Rock, and he would occasionally come to our law office there in Little Rock. That's where I first met him. And then I'd see him off and on over the years after that. I had some lawsuits with Hillary over the years, and that was my contact with her. We had no social contact.

Q What about David Watkins?

A What about David?

Q Yes. Social or business relationship?

A I'd known David, you know, see him at the tennis courts, golf course over the years. We were not social friends or anything of that sort. We just -- I'd known him through business and some contact like that at clubs where we were members.

Q What about Mr. McLarty, did you know him socially or business?

A I'd gone to college with Mack. I'd known him since 1963-64, gone to college with him, used to see him around town all the time.

Q And Ms. Rasco?

152

A I've known Carol for a number of years. She and her husband Terry, or at one time her husband Terry, you know, seen them at various social functions and business functions around town for a number of years. I'm sure there were probably many others over there that I knew. I can't think of anybody right now.

Q Now, why is it that you called Kennedy as opposed to these people?

A Because he was a lawyer, and I understood him to be in the counsel's office, and I was trying to be careful who I called so it wouldn't be misconstrued.

Q By "misconstrued," you did not want it to be construed as looking for a favor?

A Yes, sir.

Q When Kennedy called you back the second time, did he tell you who he had talked to or whether he had talked to anyone about your first conversation?

A No.

Q After the second conversation, did he

153

indicate who he had talked to?
A No.
Q Did he tell you whether or not he had talked to his clients as he had referred to them in the first conversation?
A No.
Q Without disclosing any attorney -- excuse me, any client confidences, can you tell us why you determined that it was not in your client's interest to go to the Department of Justice in Washington for assistance in the plea?
A Well, that's sort of set out in my January 13 letter to Mr. Mackay as to what my client's feelings on that point were, which basically, as I stated to him there, that David sincerely believes there are others who ultimately control the Justice Department who would alter the course of nature as far as his case is concerned. And therefore he would want to know precisely the individuals besides yourself who would make decisions on this matter.
Q And you referenced Mr. Stern, Gerald Stern; is that correct?

154

A Yes.
Q Now, Mr. Stern was a political appointee; is that correct?
A I don't know. I understood he was.
Q And you knew Mr. Mackay to be a career appointee?
A I knew Mr. Mackay to be a career officer of the Justice Department.
Q So that you were concerned that decisionmaking not be influenced by someone of a political -- someone, a political appointee, who might have to answer to the President?
A Well, yes. You know, my client's concern was that look, if I've got information to give out, I want it to do me some good. I don't want the information given in a setting or a circumstance where I'm going to give it, it's going to be put in file 13, he goes to sentencing, the judge looks down at you and asks you what are the fruits of your labor, what's the fruits of this information, what has it produced, and if the answer is nothing, it's not near as good as if it has produced something.

155

And that was my client's interest and my interest for my client.

Q So you wanted to make sure it got into the hands of someone who you trusted would do something with it or honestly evaluate it?

A My client and I wished whatever information he had to be put forth in a setting where it was more likely than not to be evaluated and acted upon in a manner that he felt was consistent with the nature of the information. And that's about as succinctly as I can put it to all of you. And he felt like he had a better shot at that with Independent Counsel than he did in the current setting.

Q Now, earlier when Mr. Ben-Veniste asked you the question about one of the reasons you had called Mr. Kennedy, and it was with -- you stated it was with respect to -- it was because you wanted to confirm some suspicions that perhaps some information was being passed back and forth between Little Rock U.S. Attorney's office and the White House. Do you recall that questioning?

A Yes.

156

Q And that answer?

A I recall that.

Q And then Mr. Ben-Veniste asked you whether or not Kennedy confirmed that suspicion and you responded he did not. Do you recall that response?

A Yes, sir.

Q Again, without breaching any client confidences, did someone else confirm your suspicion?

A Suspicions --

Q That information was going back and forth between Little Rock and the White House.

A No.

Q Did there come a point in time in August or September when you had a discussion with the FBI and Fletcher Jackson about a missing document in Mr. Hale's files?

A Yes.

Q When did that occur and what was that about?

A It was in August, early September. I don't recall exactly.

Q And what did you question in terms of a

157

missing document? How did you --
A Questioned a handwritten note that was supposed to have been given to Mr. Hale by Mr. McDougal back in the 1986 or '87 time frame.
Q And you questioned Mr. Jackson about that or the FBI about that?
A I went to Mr. Jackson with it.
Q And did you review the documents that had been seized?
A Mr. Jackson gave me the Master Marketing file to look at and review and copy, which I did.
Q And after you reviewed it, you discovered that the document was not there?
A The note that had been described was not in that file.
Q Now, you copied the original, is that correct, that Mr. Jackson had?
A I copied the original file.
Q And where did you copy that? Was that at the U.S. Attorney's office or the FBI?
A Mr. Jackson came to my office and brought the file with him and I copied it and gave it back to

158

him.
Q It was in your office after you reviewed the documents that you notified him that the document was missing?
A I think I called him and asked him if there was anything like that in the file. He told me there wasn't. I asked if I could see the file. He said sure. He brought it to my office.
Q Of course at that time your office was in the same building as the U.S. Attorney's office?
A Yes, sir. Well, in August/September I'm not sure. They moved to our building sometime end of September, early October. They were up the street about a block away.
Q In any event, he brought the file to your office, wherever that was?
A He brought the file to my office and I copied it.
Q And he gave you an opportunity to review the originals and then to copy them in your office?
A Yes, sir.
MR. GICALE: I don't have anything further

159

at this point.

EXAMINATION

BY MR. COLE:

Q I really only have one follow-up area, Mr. Coleman, and we'll try to get you on your plane out of here.

A Appreciate it. Appreciate it.

Q With regard to what Mr. Gicale was just asking you about and the document that you looked for in the Master Marketing loan file from CMS, do you have any knowledge as to whether or not at the time of the seizure of the records from CMS, the Federal Bureau of Investigation had made a file copy of what was seized?

A I have no idea.

Q So you didn't take any further steps to determine whether a note or letter of the kind you described was among the documents that the FBI took from --

A I've always had a very good relationship with Fletcher Jackson and believed everything he ever told me, and he told me it wasn't there. I looked at

160

it. He told me he had never seen it in the file in any of his reviews of the file prior to the day he gave it to me to review, and I was at the end of the road, as far as I knew.

Q And have you since been able to locate the document or a copy of the document?

A No, sir.

MR. COLE: I don't have anything further.

MR. GICALE: I just have one minute to go over my stuff.

(Recess.)

EXAMINATION

BY MR. GICALE:

Q Mr. Coleman, again you brought us copies of your phone records today for the months of June, July, August and September 1993.

A Right.

Q Long distance phone records. And referring to the first page of those records, first one is one dated July 3, 12:22 p.m. to Washington, 202-514-9500.

A Hold on one minute.

161

MR. GICALE: Off the record for a second.
(Discussion off the record.)
THE WITNESS: I can't tell whether that's July 3 or July 8.
BY MR. GICALE:
Q Do you know who that call was to?
A That would have been to Hubbell.
Q On that antitrust matter?
A Yes. That's the number 202-514-9500.
Q There's a call on July 13.
A Yes.
Q To the same number. Would that have been related to the same matter?
A Yes, sir.
Q And then on the next page, there's a call I believe it's dated August 17 to 202-456-1414.
A Right.
Q Do you know who that call was to?
A I think that's a general White House number if I'm not mistaken.
Q Would that have been your first call to Mr. Kennedy?

162

A Yes.
Q And then another call on the 18th, I believe it's at 5:08 p.m. It's kind of hard to tell.
A It looks like --
Q 202-456-6229. Would that also --
A That's as I recall, that's the direct number to the counsel's office.
Q At the White House?
A Yes.
Q And then directing your attention to the next page, August it looks like either 16th or 18th --
A I think that's the same call that's reflected on the other page, and I made two copies because for some reason when I copied this one, the cop of page 4 was cut off. Those are the same pages. The first one that you referred to is a complete copy of page 4 of the phone bill. That next page for some reason had been cut off. I think that's the same call.
Q Same call because it reflects the same

163

number of minutes and same cost.
A Yes.
Q .6 minute and .15 for cost.
A Yes.
Q The next call on the page would be August 20 at 3:41 p.m.
A Right.
Q It's a call 202-205-6860.
A I think that's to the Small Business litigation office.
Q Mr. Stevens's office?
A Yes.
Q And then referring to the second to the last page, there's a call on September 7 to 202-205-6857.
A Just a second. Which page are you on?
Q For bill date October 4.
A Okay. That's the AT&T bill?
Q Yes.
A September 7, call number 1. All right.
Q That's to 202-205-6857. Do you know --
A That's the SBA office. That's another

164

number over there in their litigation area, as I recall.
Q And that's from your number, 221-2187?
A That was from my home.
Q September 8, another phone call at 3:04 p.m. to Washington, 202-514-9500. That's to the Department of Justice; correct?
A That's correct.
Q Another call to Mr. Hubbell?
A That's correct.
Q With respect to the antitrust matter you referred to earlier?
A Right, uh-huh.
Q And another call dated September 9 at 10:29 a.m. to Washington, 202-514-9500, is that another call to Mr. Hubbell?
A Yes.
Q With respect to the same antitrust matter?
A Yes, sir.
Q And directing your attention to the last page of the records, however, it's a record with respect to two June phone calls, both on June 15.

A Right.
Q There's one at 2:19 to Washington, 202-514-9500 and one at 2:51 to the same number. Are those both phone calls to Mr. Hubbell on that date at that time with respect to the antitrust matter that we referred to earlier?
A Yes, sir, yes.
MR. GICALE: I have nothing further.
MR. COLE: Nor do I.
THE WITNESS: Could I ask on the record about being furnished with a copy and the opportunity to read and sign? You stated something about that at the inception of the deposition.
MR. GICALE: The basic rule or agreement is that if you testify, first of all, we can make a copy available for you here to review, but if you do testify, you would get it four days in advance. Now, inasmuch as the hearings continue on next week starting Tuesday, I don't know that a decision has been made at this point in time in terms of whether you would be testifying, so that's something we would have to work out after --

MR. COLE: I think that if -- assuming that Mr. -- I shouldn't assume. If Mr. Coleman is not called to testify, and recognizing the fact that he's in Little Rock and may not be able to come here, before these transcripts were published or became part of an official record, we would make arrangements with you to give you a copy to review and make any corrections that you feel are necessary.
THE WITNESS: Okay.
MR. GICALE: I'm just saying that that would not be done prior to the hearings.
THE WITNESS: I would just like that opportunity. If it's going to go further.
(Whereupon, at 5:32 p.m., the deposition was concluded.)

G. RANDOLPH COLEMAN

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, CARMEN BUNCH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Notary Public in and for the
District of Columbia

My Commission Expires MARCH 14, 1998

DEPOSITION OF LARRY A. POTTS
IN RE: S. RES. 120

THURSDAY, NOVEMBER 9, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of LARRY A. POTTS, called for examination pursuant to notice of deposition, at 9:38 a.m. in Room 534 of the Dirksen Senate Office Building, before BRENDA M. SMONSKEY, a Notary Public within and for the District of Columbia, when were present:

LOUIS J. GICALE, ESQ.
Majority Deputy Special Counsel
VIET D. DINH, ESQ.
Majority Associate Special Counsel
LANCE COLE, ESQ.
Minority Deputy Special Counsel
ANDREW M. SCHAUER, ESQ.
Minority Assistant Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

ANDREA M. SIMONTON, ESQ.
CHARLES J. SGRO, ESQ.
U.S. Department of Justice
Tenth Street & Constitution Avenue, NW
Washington, DC 20530
On behalf of the Deponent.

CONTENTS

WITNESS	EXAMINATION
Larry A. Potts	
by Mr. Gicale	3
by Mr. Cole	69
by Mr. Gicale	90
by Mr. Dinh	113
by Mr. Schauer	127
by Mr. Dinh	134
by Mr. Schauer	140

PROCEEDINGS

Whereupon,

LARRY A. POTTS

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. GICALE:

Q Could you please state your name for the record.

A Larry A. Potts, P-o-t-t-s.

Q Your present business address.

A Is Quantico, Virginia Training Academy.

Q For the FBI?

A FBI Training Academy, yes.

Q That's where you are currently assigned?

A That's correct.

Q Where were you assigned from January 1992 through February of 1994?

A I was assigned to the FBI headquarters in Washington, D.C., and my position was assistant

director in charge of the criminal investigative division.

Q This deposition is being conducted pursuant to Senate Resolution 120. The resolution establishes a Special Committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, Capital Management Services, Incorporated, the Arkansas Development Finance Authority and other related matters.

Section 1(b)(2)(c) of Senate Resolution 120 authorizes investigation and public hearings into whether the Department of Justice has improperly handled RTC criminal referrals relating to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation, and this will be the focus of today's deposition.

A Okay.

Q You have been requested to testify before the committee. This deposition is being taken in advance of a public hearing which is currently ongoing and there will be testimony next week. It is

5

possible you may testify at that hearing.
We will be asking you a series of questions. You are obviously testifying under oath. If you don't understand a question, let us know. We will rephrase it.
The stenographer will prepare a record of questions and answers. The deposition will be treated as committee confidential until the commencement of the hearings.
Prior to the hearings, you will receive a letter from the committee telling you that you may come to the Senate to review the transcript of your deposition and make note of any corrections for transcription on an errata sheet. Recently we have made some other arrangements for witnesses in the event they testify next week.
We can talk about that off the record afterwards.
MR. SGRO: All right.
BY MR. GICALE:
Q If you are called to testify at the public hearing, you will be permitted to have a copy of your

6

deposition transcript four days in advance of your testimony. That may be modified subject to some understanding we may reach later.
You may be represented by counsel. I note that Ms. Simonton is here from the FBI.
A Yes.
Q She is here on your behalf today. Mr. Sgro is here from the Department of Justice.
Objections to the form of the question will be noted for the record. Counsel may object on grounds of privilege or relevance. The Committee Chairman may rule on objections where the witness refuses to answer a question.
Do you have any questions at this point?
A No.
Q Directing your attention to 1992, when did you first become aware of a criminal referral from the Resolution Trust Corporation with respect to Madison Guaranty Savings & Loan, James and Susan McDougal and Lisa Anspaugh?
A It is very difficult for me to pinpoint the exact time, but I believe that it would have been --

7

my best recollection is that it was at about the time the meeting was set up with the Department of Justice on the 8th of October.

Q I'm going to show you what is marked for identification as Bates number 6695 through 6714. This is a copy of criminal referral C0004 relating to Madison Guaranty.

A Yes.

Q This is the criminal referral that I was just referring to. Is this the one that you -- did you eventually see a copy of this referral?

A I'm sure I eventually saw a copy of this. I believe it probably was not until 1993 that I did.

Q But in any event, is this the referral that you first discussed with the Department of Justice in October of 1992?

A I believe it is, yes. That number I think is the correct one.

Q Did you learn anything at all about this referral or the possibility that the FBI or the U.S. Attorney's Office would be receiving this referral in August of 1992?

8

A No.

Q I am going to show you what is marked for identification as document 1529 through 1533. It is a teletype dated August 26, 1992. It is to the director from the SAC Little Rock, financial institution fraud.

Directing you to the second page, document 1530, where there is a referral -- there is a reference to Madison Guaranty in the first paragraph.

A I see that.

Q Did you ever see this teletype in August of 1992?

A It is an Airtel.

Q I'm sorry? Airtel?

A I'm not trying to be picky, but there is a significant difference in terms of how these are treated. An Airtel is a much more routine communication. I don't recall ever seeing this.

Q Did anybody brief you on the possibility of receiving a referral from the RTC in August of 1992, if you recall?

9

A I don't recall being briefed on that, no.
Q If this went to the director, who actually would this have gone to?
A It would have gone first to a clerical employee within the financial institution fraud unit who would have given it to a supervisory special agent who was responsible for Little Rock.
Q Who would that agent have been at that point in time?
A I'm not sure.
Q And then --
A It was eventually Jane Erickson in that unit who was responsible, but I'm not sure when Jane came in, to tell you the truth. I just don't know.
Q And from Erickson or the person in that position, who would it go to then above them?
A That depends on what they decide to do with it. It references an Airtel dated 8/7/92 from the director. The reference is a communication from the director, which leads me to believe that it was just to Little Rock, asking them for information in order -- for resources.

10

We were trying to keep a very close eye on the use of resources in financial institution fraud because we were required by law to use specific resources that we had been given on financial institution fraud and nothing else.
So there were regular reports that were being done. This may be in reference to that. I don't know.
Q But you --
A I don't know where it would have gone.
Q You are not aware of seeing it or receiving any information with respect to it?
A That's correct. I do not.
Q Throughout the month then of -- the rest of the month, of August 1992, you don't remember any reports or any discussions with respect to this possible referral?
A No, I do not.
Q What about in September of 1992? Do you recall any reports or any discussions with anyone at FBI with respect to this?
A I do not.

11

Q In October 1992, and you gave the date of October 8, 1992, you said that there was a meeting at the Department of Justice.
A That's correct.
Q How did that come about?
A I don't know how it came about. I have done the best I can to recall how I was told about it. This is a pretty soft memory, but I believe that I was told by Fred Verinder that there was going to be a meeting at the Department of Justice concerning this referral and that Bob Mueller, who was the Assistant Attorney General for the criminal division of the Department of Justice, was going to be in attendance at this meeting, and Fred was asking me if I, because of Mueller's presence at the meeting, if I wanted to attend.
Q What was your response to that?
A I believe I indicated that I would try to attend that meeting.
Q Just so we understand the supervisory order there, Verinder reported to whom?
A Verinder reported directly to me. He was a

12

deputy assistant director within the criminal investigative division and had responsibility among other things for the white collar crime program. He would have been responsible for financial institution fraud.
Q You in turn reported to whom?
A I reported to Doug Gow, G-o-w, Douglas Gow, who was the associate -- he was the associate deputy director for investigations.
Q And then Gow in turn --
A Reported to Floyd Clark, who was the deputy collector.
Q Do we eventually get to the director?
A We do. That's the very next one. The next one is the director.
Q And that was Director Sessions at the time; correct?
A Yes, it was.
Q Now, did Mr. Verinder tell you who had requested the meeting? I don't know that you answered that.
A I just can't tell you whether -- I don't

13

know. I believe it was the Department of Justice, but I can't tell you for sure what he told me.
Q When he told you that it was with respect to this referral, was that the first time you heard about the referral?
A It is the first time I remember a discussion about the referral. It seems logical that someone would have mentioned it to me before, but I don't remember any discussion about the referral before then.
Q How much notice did he give you before the meeting?
A It was not very much notice. I think it was the same day.
Q Same day?
A Yes.
Q He walked in and said there was going to be a meeting about a criminal referral involving Madison -- well, tell me exactly what he said.
A I wish I could remember exactly what he said. I don't recall, except there was a meeting at the Department of Justice. It did involve a referral

14

from the RTC to the FBI in Little Rock in which -- and it involved a certain bank that had failed, an institution which had failed, and that the Clintons were listed as witnesses in the referral.
The purpose of the meeting, as best I recall, Fred indicated to me that they wanted to discuss the referral, and that was it.
Q Now, were you surprised that there was a referral in the department listing the Clintons as witnesses that you hadn't heard about at that point?
A Again, I can't tell you that I hadn't heard about it. I just recalled that there was the meeting set up. That was at election time. We were getting a large number of allegations that were flying in at that time about all the candidates from lots of different directions.
So to tell you that during election time it is abnormal for the FBI to get that kind of information, it is not. I can't remember being shocked about it.
Q What did you do to prepare for the meeting?
A Absolutely nothing.

15

Q Did you ask for a copy of the referral?
A I did not.
Q Did anybody explain in any more detail than you have just outlined what was contained in the referral?
A No.
Q Did you ask for copies of the previous memos or Airtels or anything with respect to the matter up to that point?
A I did not. The reason for that is that that particular position has responsibility for all criminal investigations in the FBI. We had 800 or 900 failure investigations. We had a large number of cases that I saw because of an undercover or sensitive nature.

I had two people in the chain of command below me, Fred Verinder, a high level Bureau official in charge of all white collar crime in the country, and I have Tom Kubic, who is a section chief, both of whom are SES employees and who are responsible for -- and Tom Kubic was responsible for all white collar crime.

16

I was not going to get involved in the details of that until I believed it became necessary. It was just a time element of not having the time to do that.
Q You were relying on them for information?
A That's right. And I didn't know whether I was going to be able to go to the meeting or not.
Q Was Kubic present when Verinder briefed you on this?
A I don't recall whether he was or not.
Q Did you do anything else in preparation for this meeting?
A No.
Q Did you talk to anybody else?
A No.
Q Do you recall when in the day this meeting occurred? What time of day did this meeting occur?
A I do not.
Q Whether it was morning or afternoon?
A I can't.
Q Eventually, I take it you went to this meeting. And who was in attendance?

17

A I went, but I went late, because of -- I'm not sure what other commitment it was, but I remember walking in late, because the one thing I do recall about the meeting was I recall it being in Bob Mueller's conference room, and I did not sit at the table. I sat in a row around the wall, because I had come in late.

Frankly, my recollection is I came in at the point when they were beginning to wind things up in the meeting.

Q How many people were in the meeting and who was there, if you recall?

A I remember Bob Mueller was sitting at the head of the table. I know we had a number of FBI representatives, Fred Verinder and Tom Kubic. I cannot remember who else was there from the FBI.

I believe Ira Raphaelson was there from the Department of Justice. I don't remember who else from the Department of Justice.

Q Now, I take it you sat in a seat next to the wall because all the other seats at the table were occupied?

18

A I don't know. I think there were quite a few people in the meeting. But I can't tell you that they were all occupied. I just came in and sat in one of those seats rather than going to the table.

Q When you say "quite a few," are you talking about 10 or 20?

A I can't -- I just don't remember how many people were there.

Q And those are the only names of the people that you recall?

A They are the only ones that I specifically recall, yes.

Q What did you hear being discussed when you came into the meeting?

A What I recall being discussed, in fact I think I recall Bob Mueller asking me after I came in do you know anything more about this referral than anyone else does, and I told him that I knew almost nothing about the referral. I got the feeling that that was a pretty consistent knowledge base that everyone had come to the table with.

Q How did you get that feeling?

19

A Just by the tone of Bob Mueller's question.
Q Nobody seemed to know anything about the briefing?
A All I can tell you is he seemed to not have a lot of information and he was asking me if I had more than anyone else had.
Q Other than him asking you that question and you responding in that manner, what else did you hear discussed?
A Just -- the only thing -- I didn't hear any specifics about the referral itself, only kind of the summation that we would attempt to get some kind of a reading from our field office as to their belief or their assessment of the referral, and there was specific conversation about treating this case in a normal fashion, treating this case like every other case.
Q Who said that?
A I know Mueller said it.
Q Who else said that?
A I don't remember. I know that I agreed

20

with that.
Q Did you discuss how the assessment would be made?
A Just simply that Little Rock would get the necessary documents and review them and along with the United States Attorney's office make an assessment, which is what we do in every financial institution fraud case that we get.
Q Did you come to learn that attachments to the referral were not in the possession of the FBI at the time you had the meeting?
A Yes.
Q Who related that to you?
A I don't recall. But I know that I learned either at the meeting or shortly after the meeting that we did not have the attachments, and I assume it would have been from Fred Verinder, but I can't tell you for sure; I don't recall.
Q Did you learn at the meeting that your FBI office in Little Rock and the U.S. Attorney's Office in Little Rock had received this referral around the 1st of September 1992?

21

A I did learn after the meeting of that, but I can't -- it was some time after the meeting. It was not -- for instance, when I talked to Don Pettus the next day, on the 9th, I don't recall knowing that they had had that referral for that long. I believe -- I believed when I talked to Pettus that it was something they had just received.

Q So, you were not aware at the time of the Mueller meeting or at the time you talked to Pettus the following day that the FBI or the U.S. Attorney's Office had had this --

A That's right.

Q -- matter for five or six weeks?

A That's right. The reason I can say that with some degree of assurance is that I know I didn't discuss that with Pettus, and I know I would have discussed it with Pettus had I known they had it that long.

Q Why would you have discussed it with Pettus?

A Because I would think it would be important for them to have let us known when they received it.

22

Q Why would it have been important for you to know that in early September as opposed to five or six weeks later?

A Because I think that it is a requirement, and I know that it is a requirement in our manual that any high profile case involving individuals who are of a high profile nature, field offices are required to notify FBI headquarters by teletype or by telephone of the receipt of such an allegation.

Q By teletype or telephone?

A That's right.

Q At some point in time, did you learn that rather than notifying headquarters by teletype or telephone that that FBI office had taken the file and put it in a drawer someplace and not logged it in as a regular file?

A Not until long after. This would have been probably in '93 or '94 that I learned how that had been handled.

Q When you eventually learned how that was handled, did you view that as being proper?

A No.

23

Q What would have been the proper way to have handled it under FBI standards at that point in time in 1992?
A The proper way, especially with a failure case, would have been to notify FBI headquarters immediately of the receipt and to make an assessment as to whether or not this was a case that should or should not be investigated in concert with the United States Attorney's office.
Q Again, the notification would have been by teletype or telephone and in any other form?
A I think that would have been the manner in which it should have been done.
Q When you eventually learned that it had been handled in a way other than the standard way of handling things, did you discuss that with Mr. Pettus or Mr. Potts?
A Well, you mean -- you mean who else other than Mr. Pettus?
Q I apologize. Mr. Pettus or Mr. Irons.
A No. I believe that by the time that I learned it, that Mr. Pettus was no longer there.

24

Q He had moved on to another office?
A Yes, that's correct, Kansas City.
Q What about Mr. Irons? Did you discuss the fact that it wasn't submitted with him?
A No.
Q What about the ASAC, Mr. Whitehead?
A No, I did not.
Q Just to go back briefly in time, there is a document, number 3386. This is a phone log dated Friday, September 25, 1992. It references a meeting of Potts with the director at 2:55.
(Witness examined the document.)
Do you have any recollection of that particular meeting and what was discussed with the director?
A Absolutely not.
Q Do you know whether or not there was any discussion with respect to the criminal referral we have discussed earlier?
A Can I say that this is a telephone conversation. It appears to be a telephone log, not a meeting.

25

Q Okay.
A I talked with the director so frequently, I can't tell you what that was about.
Q Again, going back to the meeting of the 8th, was there anything else that was discussed at that meeting in terms of the referral and what would be done?
A I can't recall anything else being discussed, no.
Q Do you recall whether or not there was some kind of agenda or package of materials that was handed out, including perhaps the referral at that meeting?
A I do not.
Q Showing you what is marked for identification as FBI number 985 through 996. There is a fax, an FBI facsimile cover sheet dated October 7, 1992 to FBI headquarters from FBI Little Rock regarding subject Madison Guaranty Savings & Loan.
(Witness examined the document.)
The date of this is one day prior to your

26

meeting at Mr. Mueller's office.
A Right.
Q Did you have the benefit of reviewing this prior to your meeting?
A I did not review anything prior to the meeting at the Department of Justice, no.
Q Did anybody brief you with respect to this fax?
A I got only the most basic of briefing in terms of what the referral concerned, and I believe that was from Fred Verinder. I didn't get any kind of a detailed briefing, no.
Q Did they tell you they had this fax and teletype summarizing this information?
A I don't know whether they did or not.
Q How long did you stay at the meeting?
A Very short. As I said, my recollection is that it was about to conclude as I went in.
Q 10 minutes?
A Probably. 10 minutes is close.
Q Now, you said you concurred in what would be done. Did you give any instructions as to what

27

would be done?
A No. Fred Verinder was going to oversee ensuring that the Little Rock office handled making the assessment and advising us.
Q Did you discuss with Verinder a time period by which this assessment would be completed?
A No.
Q Or a date by which this would be completed?
A No.
Q Are you aware of the fact that a request was sent out or a teletype was sent out to the Little Rock office directing that the office conduct a limited investigation and that they respond to headquarters by October 16, 1992?
A I am. I became aware of that on the 9th of October.
Q And how did you become aware of that?
A I believe that Fred Verinder, Tom Kubic, possibly Kevin Kendrick, who was a supervisor in the fraud against the government unit, and I'm not sure whether anyone else did or not, and I believe that

28

those individuals came to my office, indicated that they had sent a teletype to Little Rock asking them to do a limited investigation, that they had specifically wanted them to review the attached documents to the referral, to make an assessment along with U.S. Attorney's Office.
They showed me the teletype and they indicated to me that the SAC was having some difficulty coming to grips with whether or not this was an appropriate course of action or not.
Q Well, what do you mean they indicated that the SAC was having difficulty with coming to grips with it?
A That's exactly what they told me. They said that the SAC was concerned about opening an investigation.
Q Why did they say he was concerned about opening an investigation?
A They didn't. I told them that I would call and talk to the SAC about it.
Q Did they tell you that the SAC had had some conversations with the U.S. Attorney and that the

29

U.S. Attorney did not want to proceed with the matter at that point in time?

A I do not recall them telling me that. I talked to Don Pettus about that, but I don't recall them telling me that.

Q I'm going to show you what is marked for identification as Bates number 523 through 525, and this is a teletype dated October 9, 1992 from the director FBI to FBI Little Rock.

A Yes.

Q Is this a copy of the teletype that you reviewed on the 9th authorizing a limited investigation?

A Yes, it is.

Q And the one you discussed with Kendrick, Kubic and Verinder?

A Yes.

Q Now, when they came to you and discussed the fact that the teletype had been sent to Pettus and he was having difficulty coming to grips with it, did they also discuss with you the fact that they had included a response by the close of business

30

October 16, 1992?

A I don't think they discussed it. I believe I saw it, that it was in there, that there was a deadline.

Q Do you know who it was that decided that that would be the deadline?

A No.

Q Did you question them as to why that deadline was put in there?

A No.

Q Were the directions in this teletype consistent with the agreement that you made with the Department of Justice and you made with Mr. Mueller?

A I don't know what specific agreements were made at that meeting. I don't know whether Bob Mueller and Fred Verinder discussed specifics. But I felt that this was in compliance with what I understood from the small part of the meeting that I was there, that this would be consistent with that.

Q Was there a specific discussion with respect to not conducting witness interviews or serving grand jury subpoenas, do you recall, at the

31

meeting with Mueller?
A At the meeting with Mueller, as far as what I got out of that meeting was just to make an assessment as to whether or not this was a legitimate investigation or not, whether or not we should go forward with this investigation or not.
Q But do you recall whether or not specifics with respect to witness interviews or serving grand jury subpoenas was discussed?
A I don't recall witness interviews and grand jury subpoenas being discussed at all. But again, there was a lot of that meeting obviously that I wasn't there, so I don't know.
Q Did Verinder and/or Kubic or Kendrick discuss that with you when you came back to headquarters after the meeting with Mueller?
A No.
Q Did they discuss it with you when they came in to discuss Pettus's response to the teletype?
A Yes. I think that I sat down and read this and I indicated all we are asking them to do is simply make an assessment of the referral, and they

32

said yes, which was an obvious thing, that you wouldn't go out and issue a grand jury subpoena or interview witnesses before you had read the documents that came in in the referral so you would know who you should be interviewing or what documents should be subpoenaed or whether or not there was sufficient information there to predicate a criminal investigation or not.
We have a very firm rule, especially in financial institution fraud, white collar crime cases, and that's that we don't go forward if the United States Attorney's office doesn't indicate that they believe that this is a case that is worthy of federal prosecution, because we had very limited resources and a huge failure problem in the United States at that time. We didn't have enough resources to put on investigating a case which the U.S. Attorney says I'm not going to prosecute. That's the only reason we would investigate it.
Q Now you have the Department of Justice, main Justice asking you to take a look at it.
A That's right.

33

Q And so you believed that based on that standard, unless the U.S. Attorney's Office is ready to take a look at it, you now had at least the go-ahead from Justice to take at least a preliminary look.

A To make an assessment of the referral.

Q Would it be fair to say at that point in time when Kendrick and Kubic and Verinder came back to your office on the 9th and told you that Pettus was having difficulty coming to grips with this that you did not understand why he would not at least make this preliminary assessment?

A Absolutely. I didn't understand why he would have a problem doing what was requested in here since it would be a very normal course of action to take with regard to any referral on a failure case.

Q Was there anything else discussed in your meeting with Verinder, Kubic and Kendrick with respect to Pettus's response to this teletype?

A Not that I recall.

Q What is the next action that you took with respect to the matter?

34

A I called Pettus.

Q How soon after the meeting with Verinder, Kubic and Kendrick?

A I think right away.

Q Were they in the room with you?

A I think they may have -- I think they were, yes. I think they stayed in the room.

Q And when you called Pettus, what did you say to him and what did he say to you about this teletype and the referral?

A We discussed the teletype. I recall him indicating that he was very concerned about opening an investigation in this matter, that he believed that this was so high profile because of the witnesses that were listed that he was concerned over some leak.

I remember telling him that we obviously, the people who had sent this teletype were obviously concerned about that, too, and had specifically instructed them to take secure -- to take precautions with regard to the security of the documents and to not do any overt interviews and to hold this very

35

tight, this information about this referral very tight.

The bottom line -- he indicated that the U.S. Attorney's Office was also concerned about doing an investigation. The bottom line of our phone conversation was that it was my opinion that Don Pettus and I, after a short period of time, I believed that we were talking semantics in terms of whether or not there was to be an investigation opened or not.

I told him that I did not care what he called it, that he did not have to open a preliminary investigation; he didn't have to open a full investigation.

All I wanted him to do was to get the documents that had been sent out by RTC with the referral, the 300 documents or so, and to review them along with the United States Attorney's office, and based on the content of those documents and the cover referral document to make an assessment as to whether or not this is an investigation that was properly -- that would be properly predicated and whether or not

36

we should go forward or not.

Pettus agreed to do that, that he believed that that was appropriate.

Q How long was this conversation?

A I don't know. It wasn't a long one. I mean five minutes.

Q Was it a heated exchange?

A No. I don't think it was a heated exchange. I remember telling him at one time, I said look, if you don't have people down there who can review these documents and make the assessment, I will send people down, in terms of it being a resource issue. Pettus quickly called my bluff and said, okay, that would be great, send some people down.

I then backed off my bluff and said no, unless you don't have the resources to do it, I want you to put some people on this and review the documents so that we can give our assessment, your assessment and the U.S. Attorney's assessment to the Department of Justice.

I told him, I said if you all make an

assessment that this is a case that should go forward, we will support it. If you make an assessment that it is one that shouldn't go forward, I said I'm telling you, I will support what you and the United States Attorney's office believe is appropriate based on a review of the facts.

He seemed to be satisfied with that.

Q Did he go into any greater detail about the position of the U.S. Attorney?

A He just indicated that the United States Attorney was very reluctant to go forward with this at this time because of the election.

Q And that --

A Because of the timing of this.

Q The U.S. Attorney would have been Banks; correct?

A I think it was Banks, yes.

Q Did he indicate to you whether the U.S. Attorney had had any discussions with main Justice about this?

A He did not.

Q Did he indicate to you whether or not the

U.S. Attorney had had discussions with anybody else about whether he should go forward in this matter?

A I don't believe so. I don't recall him telling -- saying to me that the U.S. Attorney had talked to anyone else.

Q Did he indicate to you that the U.S. Attorney had told him not to do anything until he, the U.S. Attorney, had a chance to do some type of analysis on the matter?

A I don't believe so. If he had said that, I would have said, well, that's what I'm asking for, an analysis of the documents.

Q But did he tell you that the U.S. Attorney's Office told his office, Pettus's office, not to do anything until his office, the U.S. Attorney's Office, had a chance to do some type of analysis on this referral?

A I don't think so.

Q Did you have a discussion about the significance of opening up a file versus putting it in a drawer and not opening up a file as you normally would at the FBI?

39

A Well, if a referral comes in, I never believed that a referral could come in and not have a file opened. That's the first thing that happens; a file gets opened. It doesn't mean that an investigation gets opened, but at least a file gets opened. It may be put in a zero file. It may be put in a file that indicates there is not going to be any investigative activity.

But if there is a criminal referral from RTC, especially on a failure case, there needs to be some kind of action taken. It either needs to be we have reviewed it and it doesn't meet the prosecutive guidelines or we have reviewed it and discussed it with the United States Attorney's office and they have declined or deferred or taken some kind of action.

Q Is there a press policy at the FBI that is affected with respect to whether or not you, quote, open up a file?

A A press policy?

Q Yes. For instance, is it the policy of the FBI that if you have a file, you open up a file as

40

you just described, and you get an inquiry from the press and they ask the FBI whether or not there is a file with respect to a certain matter, that your response has to be "no comment" if you have a file, but that if you don't have a file logged in, you don't have to say "no comment" or you don't have to confirm that in some way?

A I don't know how firm in writing the policy was. I mean, basically we would say we don't confirm or deny pending investigations. That's basically what we would have said at that time. Now I think we would say less than that. We would refer it to the United States Attorney's office for comment.

Q In your view at that point in time, it wouldn't matter whether this referral that you have earlier identified was sitting in an agent's locked drawer or whether it was logged into the FBI filing system; the comment to the press or response to the press would be the same?

A That's right. Yes, that's right.

Now, if it involved a high profile individual, that is something that would be referred

41

to FBI headquarters maybe for discussion with the Department of Justice as to what kind of -- and with the local United States Attorney's office as to what kind of a response should be given.

Q What precautions from a filing standpoint could you take to ensure -- to attempt to ensure that this information was kept at close hold in the agency?

A If you are concerned about keeping something in close hold, you can open an investigation and you can keep the file in a different area other than a general file area. You can keep it in a more secure area, in a safe, in the SAC safe, in the supervisor's safe.

Q Did you talk to Pettus about just this issue?

A No. The press issue really never came up, although I can't tell you that Pettus didn't say -- I believe he did in fact say that the likelihood if we have an investigation open is that there will be leaks. But I never thought in terms of his belief of whether or not we opened a file or not made a

42

difference.

Q At least he never indicated that to you in that conversation you had with him on the 9th?

A No, I don't believe so. I knew he was having a very difficult time with whether or not we opened an investigation or not. I got frustrated with that and said I don't care what you call it there, I'm just interested that you review the documents, contact the United States Attorney's office and I get some kind of an official opinion from you and from the U.S. Attorney as to what should occur here.

I don't recall anything specifically, any discussion about the press policy and whether or not that would mean he would have to comment one way if an investigation was open and another way if it wasn't, because that's not my understanding of what the policy was.

Q Did he tell you where he and/or Irons were keeping the file of the referral?

A No.

Q Did he tell you who at the FBI office in

43

Little Rock had access to it or knew about it?
A No, he did not.
Q Did he tell you that Mr. Irons was present in the room when he was talking to you?
A No. Well, I don't know whether he did or not. He could have told me that.
Q Were you aware of the fact that Irons was in the room?
A I don't know.
Q Was it a speakerphone conversation on both sides? For instance, you had some other people in your office; is that correct?
A I did. No, I don't think I had it on speakerphone in my office.
Q Do you know whether he had it on speakerphone in his office?
A I don't believe he did, but he may have. I don't believe he did. I just can't tell you for sure.
Q So, your recollection is that it was between the two of you. You are not sure whether or not he had it on speakerphone.

44

A That's right.
Q And whether anyone else was present in his office in Little Rock?
A That's right.
Q Do you recall him saying anything else to you about the referral, the people in the referral, the content of the referral?
A No, I don't.
Q Do you recall saying anything else to him with respect to the referral and what had to be done?
A No, except that I reemphasized the fact that we weren't asking for anyone to be interviewed. In fact, we specifically did not want anyone interviewed. There was no call or request for action by the U.S. Attorney's office here, because he said, look, the U.S. Attorney's Office isn't inclined to go forward.
That assessment is based on a review of all these documents, I said, and he said I don't know. I said have you reviewed the documents? He said no, I haven't. I said that's a logical thing we have to do. We have to have some basis for a decision that

45

we are making and the basis has to be on the facts that we have been given. Let's make a decision based on facts.

Q When you said to him did you review the documents and he said no, I haven't, did you ask him why not at that point?

A No. I believe he told me that they didn't even have the documents, that they were with the United States Attorney's office.

Q Did he tell you that the U.S. Attorney's Office would not make them available to him at that point in time?

A No.

Q Did he tell you that the RTC was not making those available to him at that point in time?

A No. I guess I made that assumption, that they had been sent -- that they had not been sent to the FBI, because he didn't have the documents. But I don't recall any particular discussion about the fact that RTC would not make these documents available. When I finished the conversation, I didn't have any impression that it was going to be a difficult task

46

for him to get ahold of the documents.

Q Did Pettus talk about the fact that McDougal had been prosecuted prior to this date with respect to a bank fraud case? I say prior to this date, October 9th, when you were talking to him about doing this review.

A I'm sorry? Would you repeat that.

Q I think I confused you with the question.

A Yes.

Q In this conversation with Pettus on October 9th, did you discuss the fact that McDougal had been previously prosecuted by the U.S. Attorney's Office?

A I'm not sure. I think it is possible that he did say that. I'm not sure whether he did or not. I know that that's something I eventually became aware of, but I'm not sure whether or not Pettus said it in that conversation or not.

Q Did Pettus discuss with you whether or not there was any chance for monetary recovery in this case?

A I don't know. I don't believe so in that conversation, no.

47

Q Did Pettus tell you that he didn't want to open up an official case file because he was concerned about disclosures that the referral existed?

A That was the essence of what his concern was, about opening up an investigation. It wasn't -- he didn't say "case file." He said opening an investigation.

Q In that conversation of October 9th, did you or Pettus discuss the fact that Kendrick had called Irons inquiring as to the existence of this referral on October 6th or some date prior to October 9th, 1992?

A I don't remember.

Q Did you ever become aware of the fact that Kendrick had indeed called Mr. Irons to inquire as to the existence of a referral from the RTC with respect to Madison?

A Right. I am aware of that.

Q When did you become aware of that?

A I can't tell you. I don't remember. It would have been -- I can't tell you when I did.

48

Certainly not -- not any sooner than when Fred Verinder told me about the meeting at the Department of Justice. I just don't recall when that would have occurred.

Q Do you recall anything else about the conversation on October 9th with Mr. Pettus?

A No.

Q Did you have any other conversations with Mr. Pettus or anyone else from the FBI office in Little Rock on October 9, 1992?

A I don't recall that I did, no.

Q After your conversation with him, and I believe you testified that the understanding was that he agreed to review the documents or have his office review the documents; correct?

A That's correct.

Q After your conversation with him, what is the next thing that you did with respect to this case?

A I'm sure that we would have -- I'm sure that I would have made notification to Doug Gow about what had transpired.

Q Now, prior to the teletype going out on October 9th, would you have notified Doug Gow that that teletype was going out?
A I would probably have notified him. I don't know if I would have notified him about the teletype going out. I would have probably notified him about the meeting at the Department of Justice.
Q How would you have -- how did you notify him?
A I generally would have gone to his office and just told him orally, verbally about the meeting.
Q What did you tell him about the meeting at the Department of Justice?
A I don't recall specifically when I did it. So I think I would have just briefed him as that the referral had come in, that the Department of Justice had asked us for our assessment, we were unable to give it, and we were beginning to have the Little Rock office review the documents and make an assessment along with the U.S. Attorney's Office as to whether or not this was a case that was properly

predicated and should be investigated.
Q Did you discuss with Gow whether or not the Clintons were named in this referral as witnesses?
A I'm confident that I would have said that, yes.
Q After your discussion with Pettus on the 9th, you have indicated that you probably had another discussion with Gow as to what occurred in that conversation; correct?
A Right.
Q What did you say to him with respect to that conversation?
A Again, I can't tell you specifically what I said to him, but I would have told him that Little Rock was going forward with making the assessment.
Q Did you tell him that the SAC in Little Rock was giving you a hard time, at least at the beginning?
A I don't know whether I did or not.
Q Well, did you believe that that was the case at the time?
A I believe that he was being a little

51

stubborn about it, and I didn't think that he had a very good reason. His reasons seemed to me to be one of semantics as to whether or not we were opening an investigation or not.

It was clear to me that the normal course of action would obviously be to review documents that are sent to you in a referral. You don't just take a referral and on its face, look at the surface document and say this thing has no merit. You have to look at all the documents that you have been sent in order to make such an assessment.

Q Other than being stubborn, were you concerned at all about Mr. Pettus's motivations in not looking further at the referral at that time?

A No, I really was not. I thought that, like I said, this was a very high-pressure time for us. It is not unusual for us to get all kinds of allegations, and you know that you are going to be considered -- you know you are going to be second-guessed on any of them.

You have to -- as far as I am concerned, you have to try to do what you would normally do with

52

any other case, and we tried to do that. I think Pettus was not interested in getting into a difficult high-profile case. I believe that of him.

Q Did you convey that to Gow?

A Probably not.

Q Do you know whether or not at this point in time there were some discussions about Pettus being moved to another office?

A I don't remember when he was moved. I don't think there were any discussions. I just can't remember when those discussions occurred. He would have been the one that initiated those discussions because he wanted to go to Kansas City.

Q Do you know whether or not he expressed any concerns that any decisions he made in this might affect his move to Kansas City?

A I didn't hear that, no.

Q After notifying Gow, what is the next thing that you recall doing with respect to this or what is the next thing that you heard about this investigation or review?

A I don't recall anything until the results

came in, and Little Rock reported their review and their determination that no investigation should be initiated.

Q One more question with respect to the conversation on the 9th. Did Mr. Pettus express any concern about having to complete his assignment by October 16th, 1992?

A I don't recall a discussion about the deadline, no.

Q In any event, they reported back to you by October 16th, on October 16th, 1992; correct?

A I think they did, yes.

Q How is it that you received information on October 16th, 1992?

A I can't recall exactly, but I'm sure that Mr. Verinder would have briefed me on the results of their review and possibly furnished me a copy of their teletype.

(Pause.)

Q Mr. Potts, during this brief intermission, I have placed in front of you a document marked for identification as 526 through 528. It is a teletype

dated October 16, 1992 from FBI Little Rock to the director regarding James McDougal, et al.

(Witness examined the document.)

A Yes.

Q Are you familiar with this?

A Yes, I am.

Q Would this be a copy of a teletype that you reviewed on the 16th with respect to this matter?

A It would be.

Q I notice on the front page of the teletype there is a check and scribbled the name "Potts."

A Right.

Q Now, other than reading this teletype, did you have any discussions about the specifics of it with Mr. Verinder?

A I believe so. I mean, I believe that we sat down and discussed the contents, and my recollection is that the white collar crime section as well as Mr. Verinder were comfortable with the results of the review and concurred. So, I told them I also would concur.

Q Do you recall Verinder telling you that the

55

U.S. Attorney felt that the limited furnished data may indicate criminal activity on the part of James and Susan McDougal and Lisa Anspaugh?

A Yes.

Q Do you recall further that he told you that the U.S. Attorney was holding provision of a prosecutive opinion regarding those subjects in abeyance?

A Yes.

Q Did you have some discussion about why, if there was an indication of potential criminal activity on the part of certain subjects, the U.S. Attorney was holding his prosecutive opinion in abeyance?

A I believed it was because of what this teletype goes on to say, that McDougal had previously been indicted for failure relating to the Madison Guaranty Savings & Loan and had been acquitted and that he had no assets. There was just some question as a result of that as to whether or not that was a subject and an investigation that the United States Attorney's office would be interested in going

56

forward with prosecution on or not.

Q Did you view that as a resource question versus a question as to whether or not there was potential criminal activity?

A I think it is both. I mean, I think it was -- from our standpoint, it is a resource issue if the United States Attorney says, look, I'm not particularly interested and I'm not sure I want to go forward with a prosecution on this.

We have all these failure cases. They tell us in the teletype that there are two other referrals coming that are much more significant than this one, and if the U.S. Attorney's Office is not interested in going forward on the McDougals and Madison, it doesn't make sense for us to put our resources there.

From a U.S. Attorney's standpoint, it was not -- at least in terms of FBI resources, it should not have been a resource issue. Theirs was based on other reasons, it seems to me, that dealt with whether or not there could be a good prosecution, whether or not it was worthy of a federal prosecution

57

at this point or not.
Q In any event, they did not render any conclusion at that point. They were just holding it in abeyance; is that correct?
A That's correct.
Q Now, who did you discuss this teletype with?
A Again, I'm sure that we would have briefed --
Q Gow?
A -- Gow.
Q When you say "we" --
A I mean I would have briefed Gow.
Q Did you go back and talk to Mueller over at Department of Justice?
A I don't remember going back and talking to Mueller. I do recall, and I believe I recall that it was a phone conversation either with Mueller or Raphaelson -- I cannot remember which -- where they asked me if I concurred with Little Rock's position.
And I told him that it appeared to me that they had made a decision based on the opinion of the

58

United States Attorney and that I was not getting any kind of a contrary recommendation from the people in the FBI headquarters and yes, I did therefore concur.
Q Do you know whether or not you discussed this matter with Pettus or Irons after you received the teletype?
A I don't recall discussing it with either one of them.
Q Do you know whether or not they or someone from their office indicated that to do a thorough investigation of this matter, it might take as much as a year to fully investigate it?
A I don't recall that, no.
Q Or more?
A I don't recall that.
Q Did you have any other conversation with Mueller or Raphaelson with respect to this referral?
A Not that I recall, other than just the one with one or the other, where they asked me if I concurred.
Q Do you recall receiving a copy of the

59

letter to Don Pettus from Mr. Banks dated October 16, 1992?
A No.
Q Showing you what is marked for identification as FBI 1000 through 1001, a letter dated October 16, 1992 to Don Pettus regarding criminal referral C0004 from Mr. Banks.
(Witness examined the document.)
You never saw a copy of this letter?
A No.
Q Did Mr. Pettus tell you that he had received this letter from Mr. Banks?
A No.
Q Did Mr. Pettus tell you that he had requested the letter from Mr. Banks?
A No, I don't recall him saying that at all.
Q Did you have a further conversation with Mr. Pettus with respect to this criminal referral after your October 9, 1992 conversation?
A No, I don't recall that we did, no. You asked me if I had ever seen that. I believe I may have seen that later on, at the end of '93.

60

Q How did you end up seeing it later on in 1993?
A I believe Fred Verinder came in and indicated to me -- whether or not I read it at that point, I'm not sure. He came in and indicated that a letter had been found in Little Rock that had been sent to the SAC at that time and that it was something that should have been responded to.
Q When in 1993 would you have known that?
A It would have been late. It would have been at the time when we were putting resources into Little Rock in order to do the investigation that had been opened and when we were sending people down doing on-site investigations. I'm talking October, November, December.
Q Of 1993?
A Of 1993, that's right.
Q That's the first you would have learned of that letter?
A That's right.
Q The October 16, 1992 letter.
A Absolutely.

61

Q So, at that point, as you understood it, the Little Rock FBI office was in a noninvestigative posture with respect to this criminal referral?
A That's correct.
Q When is the next time you recall a discussion with respect to this referral or referrals related to it?
A It would have been -- the best I can place it, it would have been around mid to late summer of 1993.
Q July or August?
A July or August.
Q 1993?
A That's correct.
Q How did you become aware of the referral again?
A I can't tell you how I specifically became aware. The first thing I can remember being told -- and I can't tell you who told me or what method they told me -- was that there was going to be a search on this Judge Hale's business in Little Rock.
MR. COLE: Mr. Gicale, I was wondering if

62

we could go off the record for a moment before we begin this line of inquiry.
MR. GICALE: Sure.
(Discussion off the record.)
MR. GICALE: Back on the record.
BY MR. GICALE:
Q As we have just indicated off the record, I will be asking you a few more questions about this point in time up through the Hale matter, and I have a few more questions during that time period, and then Mr. Cole will then be asking you some questions with respect to the same time period and then what will be a little different about this is that we will then again question you about the period from that time forward and there will be some cross-examination after that.
MR. COLE: Follow-up questions.
MR. GICALE: Follow-up questions, yes.
BY MR. GICALE:
Q In December 1992, did you participate in transition matters with the new administration?
A Yes, I did.

63

Q Did you have meetings with representatives of the new administration with respect to matters at the FBI and the Department of Justice?
A Yes, I did.
Q Who came forward as representatives of the administration to discuss matters at the FBI and Department of Justice?
A The only person -- I had one discussion with Mr. Hamilton, Jim Hamilton, who was going to head the transition team. And under the criminal investigative division in the FBI, we have responsibility for background investigations.
So I attended a meeting in which I just introduced myself, and I introduced Tron Brekke, that's B-r-e-k-k-e, who was responsible for background investigations for the FBI. Then Tron worked with Mr. Hamilton in terms of how the referrals would come to the Bureau for background investigations to be done.
Q And the purpose of you meeting with Mr. Hamilton was to prepare for people the administration would propose for jobs at the

64

Department of Justice?
A Governmentwide. We would be doing most of the background investigations.
Q I'm aware of that. But Mr. Hamilton was there for that purpose or just for the Department of Justice appointees?
A No. For governmentwide.
The other person I would have had conversations with, but a very limited one because regretfully on the day that he came to interview people, I was out of town, was a Phil Heymann, who was doing sort of -- I think he was heading the transition team for the Department of Justice. I would have had a brief conversation with him. We prepared briefing books for him on that occasion.
Q And when would that have been, that there was a meeting with Heymann?
A I don't recall. It would have been in December, probably, late November or early December.
Q Was there more than one meeting with Heymann, do you know?
A Well, I mean all I remember is that he came

65

to the Bureau on one or two days and met with a number of people to discuss issues. It wasn't a case-specific discussion. It was issue discussions about how federal law enforcement should be organized and what any particular drug matters, how drugs should be investigated in the United States.

Q Did there come a point in time when there was a discussion about case matters with the people in the new administration?

A It would have been after the new administration came in.

Q Did the FBI prepare a summary of, for instance, significant cases to brief the Department of Justice officials on?

A There were.

Q Was this referral listed in that summary?

A I don't know.

Q Do you know if a copy of that summary exists now?

A I don't know. I don't have one. I mean, it may exist. I'm not telling you -- I certainly couldn't tell you that it didn't or doesn't.

66

Q Because of the people named in this referral, would you have viewed this as either a significant or high profile item that should at least be discussed with the new administration?

A That would have been an interesting discussion. I don't remember having a discussion as to whether this should have gone in or out, would have been in or out of a briefing book. We didn't put cases that we weren't investigating. We put pending investigations that they needed to be aware of.

This was not a pending investigation. So it would have been a little unusual to have put it in.

Q If things were not put in the briefing book but were of some significance that these new officials needed to know about, would they have been briefed orally about them?

A Certainly possible that they would have been, yes.

Q Do you know whether or not any representatives of the administration or newly

appointed officials in the new administration were briefed on this referral?
A I do not know, no.
Q In early 1993, Mr. Hubbell came to the Department of Justice; correct?
A I'm sure he did.
Q Did you have any discussions with Mr. Hubbell about this referral?
A I don't recall discussing this with Mr. Hubbell, no.
Q In 1993 or --
A At any time.
Q Do you know whether or not Mr. Hubbell made any inquiry with respect to this referral?
A No, I don't.
Q Do you know whether or not Mr. Hubbell had access to information with respect to this referral?
A No, I don't.
Q Did there come a point in time eventually that you received copies of the referral or a copy of the referral?
A I am sure at some point I received a copy

of it. I can't tell you at what point. I can tell you that I didn't review it in any detail at all.
Q Did you have it prior to the Hale case?
A I don't know.
Q Were you made aware of the fact that Mr. Banks had sought to recuse himself from this case in January and February of 1993?
A No. I don't recall that.
Q Were you made aware of the fact that the criminal division fraud section conducted some type of evaluation of the referral in February or March 1993?
A No. Just to let you know, that would not have been unusual. Transition matters kept me pretty much occupied through December and January, and then at the end of February, Waco started.
Q And that consumed a lot of your time after that?
A It did.
Q So the next time you remember any discussion or taking any action with respect to this referral would have been around mid-1993?

69

A That's correct.
MR. GICALE: I have nothing further at this point with respect to that time period.
MR. COLE: Thank you, Mr. Gicale.
EXAMINATION
BY MR. COLE:
Q Mr. Potts, first I would like to thank you and your counsel for permitting us to depart from our normal procedure here so I have the opportunity to ask you some questions about the 1992 time period before I leave to attend another deposition.
Before we begin, sir, would you like to take a break?
A No. I'm fine, sir.
Q In the summer of 1992, what was Mr. Raphaelson's position in the Department of Justice?
A He was responsible -- he was the special counsel for financial institution fraud matters.
Q In your position at the Federal Bureau of Investigation, how frequently did you have contact with Mr. Raphaelson?

70

A Very frequently. Certainly every week we talked.
Q If I understand your testimony earlier today, your best recollection is that you had no contact with anyone in the Department of Justice concerning the Madison Guaranty criminal referral prior to the October 8th meeting that you testified about.
A That's correct. See, I can't remember any information that I had about that referral prior to that meeting.
Q If I could show you a couple of documents, unfortunately they are not Bates numbered, but I will describe them for the record and state they are from the production of documents from Mr. Ira Raphaelson.
One is a September 11, 1992, what appears to be a telephone log, and the third item from the bottom of that page shows an entry with your name and appears to indicate that you were returning a call from Mr. Raphaelson.
A Yes.
Q Do you have any recollection, sir, at that

71

time what you might have been calling Mr. Raphaelson about?
A I do not.
Q Are you confident to the best of your recollection that it was not anything regarding Madison Guaranty Savings & Loan or the Clintons?
A To the best of my recollection, I don't believe it had anything to do with Madison.
Q If Mr. Raphaelson wanted to obtain information from the Federal Bureau of Investigation as to whether or not a particular matter was the subject of an FBI investigation, who would he have contacted at that time?
A Most likely Tom Kubic or Fred Verinder.
Q Do you have any recollection of Mr. Raphaelson ever contacting you?
A I do not.
Q With regard to the -- I'm pausing because I'm trying to remember whether this was a teletype or an Airtel or just a fax. With regard to the document that Mr. Gicale showed you earlier dated October 7, 1992, Bates numbered FBI 985 through 996, if I could

72

show you that document again, sir.
A Yes.
Q You have no recollection of having seen that document prior to the October 8th meeting that you described?
A No, I do not.
Q Would it have been within the scope of his responsibilities for Mr. Kendrick to have contacted Mr. Irons or others in the Little Rock FBI office on this matter at his own initiative?
A Certainly.
Q Do you have any knowledge as to whether anyone directed Mr. Kendrick to make that inquiry that is referenced on the first page of that telecopy?
A No, sir, I do not.
Q To your knowledge, was there only one meeting with Department of Justice officials, one face-to-face meeting between Department of Justice officials and FBI officials on this subject, the subject being the Madison Guaranty criminal referral?
A That's correct.

73

Q At the meeting that you attended on October 8th, the only two Department of Justice officials that you recall attending were Mr. Mueller and Mr. Raphaelson; is that correct?
A That's right.
Q Mr. Mueller was the head of the criminal division in the Justice Department at that time?
A That's right.
Q Was that a political appointment?
A Yes, it was.
Q You previously described Mr. Raphaelson's position as head of the financial institution fraud section or unit of the Department of Justice?
A That's right. He was special counsel.
Q Was that a political appointment?
A Yes, it was.
Q So, there were no officials from the Department of Justice there who were career Justice Department officials?
A I believe surely there probably were, but I just don't recall who they were.
Q The documents that we have, including a

74

draft of a chronology that is numbered FBI 1062 shows Mr. Raphaelson, Mr. Mueller, Mr. Verinder, Mr. Kendrick, Mr. Dick and Mr. Kubic, and I had a question before today as to why your name wasn't on that. I think perhaps you have already answered my question by explaining that you came into the meeting late.
A I didn't really participate in much of the meeting.
Q My purpose in showing you the document at this time is to ask whether you recall whether there was anyone other than Mr. Raphaelson and Mr. Mueller from the Department of Justice at the meeting.
A I can't recall specifically anyone else. So I just can't tell you.
Q In your experience at the FBI, would it have been unusual to have a meeting on a matter concerning a possible criminal investigation that would not have been attended by any career Department of Justice officials?
A No. I mean I think as long as you have the two people who were primarily responsible for the

75

programs, I don't think that is necessarily unusual.
Q Recognizing that you came into the meeting late, you indicated that perhaps it was even near the end of the meeting, do you have any recollection of whether anyone at the meetings indicated a desire or interest to learn what the criminal referral or the attachment to the criminal referral said about the Clintons?
A No. The discussion I recall was to find out whether or not this constituted predication for an investigation in whether we should go forward.
Q And not limiting my question to what was said or what you heard being said at that meeting, did you ever come to learn that anyone in the Department of Justice or the FBI had an interest in learning what the criminal referral said about the Clintons?
A No.
Q Did anyone at the meeting indicate that the Attorney General, who then I believe was Mr. William Barr, was interested in obtaining additional information about the criminal referral?

76

A I don't recall his name ever being mentioned in relation to this, no.
Q I don't want to recover all of the ground that Mr. Gicale already has covered, but there is one aspect of the events that you described that I don't fully understand, and I will try to ask the question as succinctly as I can. If I am not clear, you or your counsel I'm sure can tell me.
I believe you testified that the FBI's policy was not to conduct a criminal investigation if a local U.S. Attorney's Office had decided a matter was not appropriate for prosecution for whatever reason; is that correct?
A That's correct.
Q What I'm struggling with is to understand why after the meeting on October 8th there was apparently a consensus reached that it was necessary for the FBI to review the documents in Little Rock, I believe is what you testified to, in light of the fact that the U.S. Attorney in Little Rock had determined that at that time he was not interested in pursuing a criminal investigation.

77

Can you shed any more information on that so it is clear?

A I can't. While we certainly give deference to the United States Attorney's office in terms of making a prosecutive opinion, it would be highly unusual for the FBI not to have an opinion about whether or not --

Q I would expect that would be your answer.

A -- about whether or not we should go forward or not. The referral had been made to the U.S. Attorney's Office and to the FBI. The FBI has the responsibility for investigation of FIF matters, especially failures that were such a big issue at the time.

Therefore, we would have -- it is not something where we let the U.S. Attorney's Office review all the facts and tell us and then if they think there should be an investigation, they send it over to us and say go do it.

It is more of where we make an assessment, they make an assessment and then we sit down and discuss it. They have, I tend to say, the final

78

say. They certainly have the say in terms of whether or not it should be prosecuted or not.

If we disagree with that and it cannot be resolved on the local level, then it is referred to Washington for a resolution, and that sometimes occurs.

Q At the October 8th meeting, was there any discussion of the local U.S. Attorney's position on the matter?

A Not while I was there. I don't recall any discussion about that at all.

Q And I believe if I am recalling your testimony correctly, you recall a second follow-up discussion with Mr. Verinder, perhaps Mr. Kubic, in which you discuss the teletype or Airtel that was sent from FBI headquarters to Little Rock to review the documents?

A That's correct.

Q At the time of that discussion with Mr. Verinder and perhaps others, was there any discussion of what the position was at the local U.S. Attorney in Little Rock with regard to

proceeding with an investigation?
A I don't recall that there was, no.
Q At the October 8 meeting or otherwise, did anyone express any concern about the fact that at that time the only persons who had reviewed the documentation associated with the criminal referral were local prosecutors in Little Rock?
A At what point?
Q At either the October 8th meeting or if not at that meeting otherwise at any other time.
A I would have expressed that on the 9th. I'm not so sure that I didn't express that to SAC Pettus, that we had a shared responsibility in making this determination as to whether an investigation should be done or not.
Q I think I made my question too broad. Perhaps I should focus on the October 8th meeting. Do you recall any discussion at the October 8th meeting of concern that only local prosecutors in Little Rock had reviewed the documentation?
A No, except for the fact that it was clear that we had not reviewed the documents. When I say

we, the FBI in Little Rock had not reviewed the documents, and that the department was asking for an FBI assessment, and therefore we would have to do that.
Q At what point -- and I apologize, I think you testified to this. At what point did you come to learn that the FBI in Little Rock did not have the documents and that the documents had been given to the local U.S. Attorney?
A I'm not sure. I assume that after -- I have to assume that it was on the -- it was either after the meeting on the 8th or on the 9th that I learned that.
Q Do you have any knowledge as to what is the normal practice when RTC criminal referrals are forwarded to the Department of Justice and the FBI as to who is provided the documentation?
A My understanding -- and I could be wrong on this, it is not an area where I am an expert -- but my understanding is that we would both get the documents, the attached documents.
Q Do you have any knowledge as to why that

81

did not occur in this case?
A I do not.
Q Did you ever discuss that with Mr. Pettus?
A I did not.
Q Did anyone ever indicate to you in words or in substance that the RTC had an interest in having that criminal referral acted upon quickly by the Department of Justice?
A You said did they ever. I know that in 1993, there were stories that indicated that RTC had been anxious to have that acted on, but I don't have any direct information about that.
Q Other than some press accounts at or about the time of the events we are discussing, which would be the fall of 1992, you had no --
A No. I believe Don Pettus said you have to question the motivation of a referral that comes in at this time, and I said I agree. I think any time we get information, you have to question the motivation of the person that is giving it.
You can't just go on assumption. You have to look at the facts and see if there are any facts

82

that support it. You make your decision from that point, not from not knowing what the facts in the referral are.
Q Did Mr. Pettus say anything more about why you would have to question the motivation of the referral that was received at that time?
A My memory is that he was basing it on timing and that was it.
Q Did he say anything further to you about the concerns of the United States Attorney in that regard?
A No. I mean, I believe he connected the U.S. Attorney's concerns with that same issue.
Q What is your best understanding of why Mr. Mueller called the meeting on October 8th?
A To determine whether or not the FBI had an assessment as to whether or not this referral should be acted upon and investigated.
Q And are you aware of any other instance in which the Department of Justice made such an inquiry of the FBI concerning an RTC criminal referral? Let me clarify that by saying FBI headquarters.

A I think that was a very normal occurrence for failure matters to be a point of discussion as to whether or not there should be investigation or not.

Q It is your testimony that it was a normal occurrence for senior officials, including the head of the criminal division, to contact senior officials like yourself at FBI headquarters and ask that they take action with respect to a referral in a local U.S. Attorney's Office?

A No, you stated it a little broader than what I intended. First, I don't recall them contacting me about the meeting. I remember hearing about it from Fred Verinder. That was Ira Raphaelson's main job. It was his only job, was to oversee -- I don't mean to demean that --

Q We may have to check his testimony on that. I believe he described his responsibilities a bit more expansively.

A Well, and they may well have been much more expansive. But his position was special counsel -- I don't want to get in the middle of this.

His position was special counsel for

financial institution fraud matters, and so it would have been highly normal for him to have those kind of conversations with Fred Verinder, Tom Kubic and even to call me. That would not be out of the ordinary.

I believe that this was clearly -- let me just say it wouldn't be out of the ordinary in several of the other allegations that came in about this time, about election time, for me to be involved in discussions or for Bob Mueller to be involved in discussions if any of the candidates were listed as victims, witnesses, subjects or any of the above.

So, I mean that wouldn't have been abnormal.

Q Thank you. That's all. In the time period that we have been discussing, which would be the fall of 1992, did you have any discussions with Director Sessions about the Madison referral or events associated with that referral?

A I don't specifically recall whether or not I did or not. At that particular time, Director Sessions had meetings in the morning with the deputy director and the two deputy or associate deputy

directors, and so they would have frequently briefed him on what was going on, what the issues were and what cases were being investigated and things like that.

I just can't recall specifically discussing this matter with Director Sessions.

Q Is this matter, now that I think we have explored it in reasonable detail, the kind of thing that in the normal course would have been reported to the director?

A Absolutely.

Q But you have no recollection --

A No question about that. You would have expected that Mr. Gow would have told Mr. Clark who would have told the director or that Mr. Gow would have told the director directly, clearly.

Q But you have no recollection as to whether that in fact occurred?

A I do not.

Q Do you have any recollection as to whether the director ever inquired about this matter to you or others?

A No, I do not.

Q Other than the discussions that you have testified to already with Mr. Mueller, Mr. Raphaelson, including the follow-up discussion I believe you said you had with either Mr. Mueller or Mr. Raphaelson, did you have any other discussions with anyone at the Department of Justice about this matter?

A Not in 1992, no.

Q Up until the presidential inauguration in 1993, say, did you have any discussions?

A No, I don't believe so. The only -- no, not at that point. Later on with Jack Keeney.

Q My next question was going to be if you ever discussed this question with Mr. Keeney.

A I did.

Q I won't ask you when, but I will say for Mr. Gicale's benefit, if it comes into the area that we haven't yet explored, I won't get into it.

A I believe it comes in the summer, early fall of 1993.

Q Having to do with the Hale investigation?

A Yes.
Q I will defer on that point.
Do you have any knowledge of anyone else at the FBI having discussions with anyone at the Department of Justice other than what you have already testified to today at any time in calendar 1992?
A No. I'm confident that someone, either Verinder or Kubic or Kevin Kendrick, or someone would have relayed this information formally to the Department of Justice about the opinion of the FBI Little Rock and U.S. Attorney Little Rock. I don't have any knowledge of who did that or when.
Q Do you have any knowledge of anyone at the FBI discussing this matter with anyone else in or out of government other than what you have discussed today in 1992?
A No, I do not.
Q So to the best of your knowledge, this matter was kept confidential at least through 1992?
A Yes.
Q Just to hopefully close the loop, do you

have any knowledge of any inquiries being directed to the Department of Justice -- and I would define the Department of Justice to include the FBI -- about this matter other than what we have discussed this morning in 1992?
A No, I don't. I am aware, but I don't think I was aware of it then, of a press inquiry at some point before the meeting at the Department of Justice as to whether or not there was an investigation.
Q I believe we have a document that references that press inquiry, if you will bear with me for a moment. Perhaps I can find it.
(Pause.)
A I think that's where I saw it, was in a chronology.
Q That's what I'm looking for. Perhaps while my colleague is finding the document, do you recall what you learned about that press inquiry?
A No. Just simply that there had been a press inquiry. I don't know from where the inquiry came. It went to the Department of Justice as to whether or not there was a criminal investigation

89

ongoing regarding then-candidate for president Bill Clinton.

Q So, to the best of your recollection, the press inquiry was phrased in terms of Bill Clinton as opposed to Madison Guaranty or Jim McDougal or any of the other entities that were involved here?

A I believe it was, yes.

Q Do you have any knowledge as to whether that press inquiry came into the Department of Justice or the FBI?

A Getting my information from the chronology, I didn't have any direct knowledge of it. My memory of the chronology was that it came into the Department of Justice, who then asked the FBI if we had anything, and I believe we reported we did not.

Q Just so that our record is clear here, I will show you the document, which is numbered FBI 960, which appears to be a final version of a chronology without the exhibits. I think the third entry may be what you are referring to.

(Witness examined the document.)

A That's correct.

90

Q Do you have any knowledge concerning that press inquiry other than what is shown in the chronology there?

A I do not.

Q Do you recall discussing that with anyone?

A No. I only recall seeing this when the chronology was prepared.

Q Do you have any knowledge in this time period, the summer, fall of 1992, of any inquiries from the White House to the Department of Justice concerning this matter?

A No.

Q And would the same be true with respect to inquiries to the FBI?

A That's correct. The answer is no.

MR. COLE: I don't think I have anything further at this time. If you would like to proceed, Mr. Gicale, with the 1993 events that you had begun.

MR. GICALE: Off the record.

(Discussion off the record.)

EXAMINATION

BY MR. GICALE:

91

Q Mr. Potts, did you ever talk to Mr. Banks about this in 1992?
A No.
Q Have you ever talked to Mr. Banks about this before?
A No.
Q When you say that there was a report, a press inquiry at DOJ, and that the response was that there was no file, how do you know that?
A From the chronology.
Q And that really is the sole source of your knowledge?
A That is the sole source of my knowledge regarding that.
MR. GICALE: Off the record again.
(Discussion off the record.)
BY MR. GICALE:
Q The next time you indicated that you learned of something going on with respect to this referral or you did anything with respect to this criminal referral C0004 was sometime in midyear, July or August of 1993; correct?

92

A That's correct.
Q And you say it came up with respect to the Hale investigation?
A That's correct.
Q Now, how is that?
A I believe the first thing I remember being told was that we were doing a search on Hale's business.
Q Do you know who told you that?
A No.
Q How did you relate that to the C0004 referral?
A They indicated that -- the reason I put the two together is that they told me that Hale was an associate of McDougal's.
Q And so you knew McDougal was the subject of this first referral and that C0004 --
A They told me that, that this is an individual who is an associate of McDougal's who was in this first referral.
Q What was the next thing you recall in terms of the referral or some discussion about McDougal and

93

an investigation of Madison?
A Then later on, we opened an investigation of -- a financial institution fraud investigation where both Hale and McDougal were subjects involving Madison --
Q It was an investigation of Madison Guaranty?
A That's right.
Q That would have been in July or August 1993?
A Right. I believe that was subsequent to the search of Hale's business.
Q Now, how were you briefed on that information?
A Again, I can't -- I don't remember specifically, but I am confident that I was.
Q Would that have been orally or through reports that would have been submitted from agents in Little Rock to headquarters?
A I believe it would have been orally.
Q Orally?
A Yes.

94

Q At that point in time, July or August, did you then take any steps to further review the referral or further discuss the initial referral?
A No, I did not.
Q After learning that the office out in Little Rock had opened an investigation with respect to Hale, possibly McDougal and Madison Guaranty in August of 1993, what was your next involvement or awareness with respect to this investigation?
A My memory is that in probably September there were -- I was being told by Fred Verinder that there were other referrals that were supposed to come from RTC regarding Madison, but that they weren't coming as quickly as they should, in his opinion, and that he and other people within the criminal division were working with Little Rock and RTC to try to speed that up.
And then there was -- I was being told that there was going to be an indictment on Hale.
Q You got that information from Verinder?
A From Verinder. Now, at about that same time, you know, the new director was coming in. So,

95

we would have been briefing him on what was going on with this.

Q Director Freeh?

A Director Freeh. I know that one of the things that I set up after he came in, but I can't tell you -- it was probably near the end of the month by the time he got around to this, that we were briefing him on different sections of the criminal division, organized crime, drugs, and we briefed him on white collar crime I believe in September, and he would have received at least a cursory briefing on this in September.

Q Would that briefing have included a reference to the first referral and Hale and the investigation in August of '93?

A I don't know whether it did or not. I was not there.

Q Showing you what is marked for identification as FBI number 2298, these are some notes. The word at the top of these notes is a word titled "transfer." There is a title of "transfer" at the top of the notes.

96

Are these your notes or do you know whose notes they are?

A I don't know whose notes they are. They are not mine.

Q Have you ever seen these notes?

A Yes, I have. I saw them when Andrea showed me some of the documents that pertained to this last week or two weeks ago, and that's the first time I saw this.

Q Going to the middle of the page where it says "according to Potts and Verinder, they both better have their ducks in order," do you know what that refers to?

A I can't tell you exactly what this -- this is hard for me to read, and it is -- so, I would be guessing. But because it was talking about being selected by the Fiske people to go to Little Rock --

Q So, this is post-November 1993?

A Yes.

Q I'm sorry -- post-January 1994?

A Yes.

MS. SIMONTON: Which is also post-November

97

1993.

BY MR. GICALE:

Q Now, do you know when you learned that Hale would be indicted? Do you know what date you learned that he would be indicted?

A I don't know.

Q Do you recall whether it was a Friday or a Monday?

A I do not.

Q Earlier you testified that eventually you had some conversation with Mr. Keeney from the Department of Justice. Would that have been around the time that you found out that Mr. Hale was going to be indicted?

A Probably. I can't tell you whether it was before or after, but my concern -- I think my conversation with Mr. Keeney was a concern that we needed to get all these other referrals from RTC and we needed -- I also had discussions probably in October of '92 with Mr. Keeney about --

Q 'October '92?

A 'October of '92 -- no. '93. I said '92.

98

I meant '93. In October of '93, discussions about getting some kind of a -- getting the issue regarding the proffer that Hale's attorney was indicating he would make resolved, because that was an issue especially after his indictment that was of primary interest to us, to get some kind of -- that whole issue of the proffer decided upon.

Q Now, around the time that Mr. Hale was indicted, did you become aware of some press inquiries with respect to Hale's pending indictment?

A Well, I became aware of the fact that Hale was talking to the press.

Q How did you become aware of that?

A I'm not sure other than, again, I learned probably almost everything in this case through Fred Verinder. But he would have told me that there were press accounts and that Hale was indicating that he knew a lot of information about the political figures in Arkansas and that he was willing to make this information known to the government.

Q And that was prior to his indictment?

A I don't know. I don't know whether that

was before his indictment or after.
Q Do you know whether or not there was a meeting at the Department of Justice to discuss some of these press inquiries with Mr. Keeney?
A I do not.
Q Do you know whether or not Mr. Nathan from the Department of Justice had received some inquiries from somebody in the press with respect to these allegations?
A I'm not sure. I think I -- I received a phone call, and I think it was at home, on the weekend from Mr. Keeney, and I can't tell you whether it was before or after the indictment, who indicated to me that a high-level Department of Justice official had received information from someone who wanted to remain confidential about Hale and the fact that Hale had information to be passed along regarding some political figures in Arkansas.
Q Which political figures?
A I believe the Clintons were mentioned.
Q Anybody else that you recall?
A There were other names. I can't remember

whether Governor Tucker's name was mentioned at that point or not. I just don't recall.
Q Now, Keeney called you to inform you of this or to request something of the department at this point?
A My recollection is he called to inform me of that.
Q Did he indicate to you that there would be a meeting at the Department of Justice on the following Monday to discuss the information that the high-level official had received?
A I don't -- I remember that we would have some follow-up the next week, but I don't recall that there was going to be a meeting on Monday.
Q Did he identify the official at that point?
A No.
Q What follow-up was discussed in this phone call?
A I don't -- just that we would have the FBI and Department of Justice get together next week for the follow-up.
Q And did you participate in the follow-up

101

conversations between the FBI and the Department of Justice the following week?
A No, I didn't.
Q Were you briefed on them?
A I probably was. I don't remember specifically what was discussed, though.
Q I'm going to show you what is marked for identification as Exhibit 4660 through 4662. This is a memorandum to the director dated September 21, 1993 from John Keeney regarding subject David Hale dba Capital Management.
(Witness examined the document.)
A Yes.
Q Are you familiar with this memorandum?
A I am, yes.
Q Did you review this memorandum at the FBI around the date of this memorandum, September 21, 1993?
A I'm sure that I did, yes.
Q And the purpose of this memorandum was to summarize the status of information from different sources with respect to this investigation; correct?

102

A That's correct.
Q Now, did you discuss this memorandum with Mr. Keeney during that week, around September 21, 1993?
A No. I believe that I would have given this to Fred Verinder and he would have followed up.
Q Did you have any discussions with Verinder about the content of the memorandum?
A As I said, there were continuing discussions about trying to nail down whether or not we were going to get a proffer from Hale or not.
Q And did Mr. Verinder or someone else update you as to the plea discussions that were ongoing with Ms. Casey's office in Little Rock?
A With regard to Hale?
Q Yes.
A Yes.
Q Was there some discussion about the position of the FBI with respect to a requirement as to what Hale would have to plead to in return for the proffer?
A No. I mean, I believe that there was -- I

don't recall the FBI, not in Washington, taking a position with regard to that. I do recall that Hale was asking, I believe, for complete immunity, if I recall correctly. We thought the proffer would have to be pretty good to go for that.

Q Do you recall any discussions in Washington about the possibility of -- strike that.

Do you recall receiving any information from anyone that the attorney for Mr. Hale, Mr. Coleman, had not expressed confidence in the U.S. Attorney's ability to address this fairly and impartially?

A I believe there were -- I think there were feelings from both sides that -- I don't specifically recall that there was a concern on the defense attorney's part that they couldn't address it impartially but that they couldn't bring this thing to a conclusion. There was a feeling that I was getting from Verinder that the defense attorneys were just simply trying to delay it.

Q Do you know whether or not the defense attorney or attorneys were ever told that they could

come to the Department of Justice in Washington to discuss their proffer?

A I do not.

Q Do you know whether or not Mr. Keeney indicated to Ms. Casey that she should recuse herself from this matter?

A I do not. I know that in probably October we learned that Ms. Casey was in fact considering recusal and that in fact she had in essence already had an Assistant United States Attorney handling most of the matters relating to this case as opposed to her handling it.

Q Do you recall whether or not your department took a position as to whether or not she should recuse herself from the matter?

A I don't believe that we did, no.

Q Do you recall whether or not Mr. Irons at some point in time had briefed Ms. Casey with respect to the involvement of Mr. Tucker and Mr. Ward and Mr. Smith?

A No, I do not.

Q Do you know whether or not Ms. Casey

105

indicated that she would recuse herself on September 24th, 1993?
A That she would? My best memory is that sometime after the indictment of Hale, probably in October I learned that she was considering recusal.
Q Do you know why she was considering recusal?
A Because of her prior association with some of the people who were involved in the case, and I can't remember whether that was Ward or Tucker or both. I just don't recall.
Q Do you know whether or not it was the director's position that she should recuse herself from this matter?
A No, I don't. The only thing I recall at all in that regard is an expression I believe it was after the recusal had occurred that that decision seems like it could have been done at an earlier stage.
Q Expression from the director?
A Yes, that the decision could have been made earlier.

106

Q Did he indicate whether or not he thought it affected the handling of the case?
A No. If he had felt that, I would have known that. He didn't express it to me.
Q I'm going to show you what is marked as FBI 2082. This is an E-mail, I guess, from Kubic to Owens, Kendrick, Wade dated September 26, 1993, 1:23 p.m., regarding the director's visit.
Would this be one of the briefings you were referring to in late September?
A This is the briefing I was referring to. It is to Kendrick, Chuck Owens, Ed Lukinoff and Rick Wade, who were the unit chiefs working for Tom Kubic within white collar crime in Washington.
Q You believe it was at the briefing referenced here that this matter, Madison, would have come up?
A Yes.
Q September 26th?
A Yes.
Q September 26 is the date of the E-mail.
A That is a Sunday.

107

Q Tomorrow morning it says is the meeting which would have been September 27, 1993.
A Right. I said that first name was Kevin Kendrick. It may have been to Jane Erickson. I'm not sure. That's an E-mail abbreviation and I don't know who got that.
Q Do you know whether or not the U.S. Attorney during that period of time, late September, October, was telling the FBI that while she would recuse, she was concerned about the timing of the recusal?
A No, I don't.
Q Do you recall any other involvement you may have had with respect to this case in September of 1993?
A No, not in September.
Q What about October?
A October I believe would have been the time when the other referrals came in. We had nine referrals. We started getting a pretty large volume of documents from RTC. So, I would have been involved in discussions about getting the proper

108

resources to Little Rock to handle all of that.
Q Any further discussions with respect to a proffer from Mr. Hale?
A I think that continued. I think the discussions regarding the proffer and resources were the two major discussions that occurred from October through December.
Q What discussions do you recall occurring with respect to the proffer?
A Just -- the discussions I would have had would have been very basic ones with Verinder where I would ask whether or not any progress had been made and he would tell me no. There were some update notes that we did to the director, two or three update notes that we would have done to the director regarding the case.
Q The status of the overall investigation? When you say "the case," are you referring to Hale and Madison at this point?
A That's right.
Q When the referrals came in in October, the second set of referrals, would you have received a

109

copy of those referrals?
A No, I probably would not have.
Q Did you receive a copy?
A I don't recall that I did.
Q Did anybody discuss the content of those referrals with you?
A I think we summarized those in a note for the director, I mean a summary of about two or three sentences on each referral, which would just have indicated who the primary subjects were in each of the referrals.
Q Do you know who prepared that?
A It would have been prepared out of the white collar crime section.
Q In Washington?
A In Washington, yes.
Q Now, at that point in time, who were you reporting to?
A More directly to Floyd Clark, but I believe that Doug Gow was still there. But I would have had more direct conversations with Floyd Clark at that point. But Doug Gow was still kept in the loop.

110

Q With respect to resources and the proffer and the information from the press, would you have been briefing Gow and/or Clark?
A And the director.
Q And the director during this time period?
A Yes.
Q And with respect to the content of the referrals, would you have been notifying the same people?
A Yes. A note to the director regarding this would have gone through Gow and Clark to the director.
MR. GICALE: Off the record.
(Discussion off the record.)
BY MR. GICALE:
Q Mr. Potts, you have indicated you recall seeing two notes to the director. When would those have been?
A In October and November. One in October and one in November.
Q And those notes would have summarized the status of the investigation at that point in time?

111

A That's correct, in a very short, basic way, just generally what the status was.
Q Did you have any other involvement with respect to this case in October 1993?
A No, I didn't.
Q Did you have any conversations with Mr. Keeney at the Department of Justice in October 1993?
A No. I believe in late October we had a request that did not -- I'm not sure who it came to. It would have come probably to Fred Verinder for us to do an update, just a letter to him, to Jack Keeney, summarizing the status of the investigation.
Q Would that be the extent of the contact with Keeney during that time period?
A That's correct.
Q Did you have any meetings at the Department of Justice with respect to this?
A No.
Q Were you aware of any meetings?
A No. I'm not specifically aware of any meetings, no.

112

Q Did you have any conversations with the U.S. Attorney out in Little Rock at that point?
A Never, no.
Q Paula Casey?
A No.
Q Her first assistant, Mr. Johnson?
A No.
Q Do you recall a point in time in October 1993 when the U.S. Attorney declined the first referral?
A No. I was not aware of that, that that letter had been sent.
Q Did you subsequently become aware that a letter had been sent?
A I did become subsequently aware of it and I cannot tell you when that was. I have a difficult time placing it at all. I don't believe it was in close time period to the declination itself.
Q Did you see the letter of declination?
A I don't believe that I did, no.
Q Did the FBI agents -- I'm going to show you what is marked for identification as Exhibit

113

Number 1006, a letter dated October 27, 1993 to Jean Lewis from Paula Casey regarding criminal referral C0004.

Did you receive a copy of this letter?

A Not that I recall, no.

Q Do you recall any agents or any supervisors in Washington telling you that Paula Casey had contacted the FBI office in Little Rock to discuss whether or not this letter should be sent prior to it being sent out?

A No.

Q Do you recall any other involvement between the end of -- between October and the time that Ms. Casey recused herself on November 5th?

A No, I don't recall any.

MR. GICALE: I believe I have nothing further at this point. It is now noon. Can we just break for a minute?

MR. COLE: Sure.

(Recess.)

EXAMINATION

BY MR. DINH:

114

Q I just have a couple more questions to clarify in my mind the chronology you have laid out for Mr. Gicale. Before I do that, I would like to note our apology for the fact that Mr. Gicale had to leave. As you may know, Mr. Gicale is involved in the other deposition that Mr. Cole also had to participate in, and around this time of year, especially with hearings going on, our staffing becomes a little bit hectic.

I am Viet Dinh. I am with the Majority staff.

Going back to your first knowledge of the FBI investigation of David Hale and Capital Management, you testified earlier that you first became aware of that investigation sometime in July or August of 1993.

A That's the best recollection that I have, yes.

Q You also testified to the fact that you became aware of a raid, of an FBI raid of Capital Management or David Hale's offices.

A The execution of a search warrant, yes.

115

Q Do you know whether you came to know about the investigation prior to the execution of the search warrant?
A I can't tell you. I don't believe so. The best recollection I have is it would have been around the time of the execution of the search warrant.
Q You were briefed about the execution of the search warrant and also the pending investigation?
A That's correct.
Q Between that briefing and when you subsequently came to have discussions that you testified earlier to with respect to the grand jury indictment of Mr. Hale, did you have any other discussions about the case?
A Between execution of the search warrant and the indictment?
Q Right.
A I think we covered several of those.
MR. SGRO: Do you mean in addition to what he has already testified to?
MR. DINH: Yes.
THE WITNESS: I can't recall anything other

116

than what we already talked about.
BY MR. DINH:
Q Did there come a time in October or November of 1993 that you became aware of any FBI investigation or questions about any transfer of documents from the SBA to the White House?
A Yes.
Q How did you come to have that knowledge?
A I would have been advised, again probably by Fred Verinder, that there had been a report prepared by the SBA about Madison. I am a little confused in my recollection as to whether this was a report prepared as a part of the SBA investigation or whether this was a report prepared at the request of Congress by SBA.
Nevertheless, it was a report about Madison which had been --
MR. SCHAUER: I want to clarify for the record, Madison or Capital Management?
MR. DINH: Or both.
THE WITNESS: I guess I don't remember. I'm sorry.

117

I think it was Capital Management as opposed to Madison, but that memory is pretty bad, I can tell you.

And that an individual at the SBA had been contacted by an individual at the White House and had been asked for a copy of that report which had been provided.

BY MR. DINH:

Q Do you know at approximately what time frame Mr. Verinder gave you this briefing? Was it contemporaneous to when he found out about the transcript?

A I believe that it was, yes, because he had told me that there had been discussions at the Department of Justice about individuals who needed to be interviewed regarding the transfer of this report from SBA to the White House.

Q Did he identify who the individuals were?

A He did.

Q Can you -- do you recall who they were?

A I think Mr. Eggleston, Mr. Lindsey, Mr. Kennedy and Mr. Nussbaum were the individuals in

118

particular. In fact, they sent me a note --

Q They?

A Fred Verinder sent me a note requesting authority to interview those individuals at the White House concerning this SBA report and indicated I believe that Phil Heymann, who was the Deputy Attorney General, had actually approved these interviews at the Department of Justice.

Q Why did Mr. Verinder need to send you a note to request these interviews? Was it the normal course of procedure?

A That's normal procedure for an interview of someone in a high-level position within the government.

Q But at the time you received this note, you had knowledge that Mr. Heymann had already approved these interviews?

A I think they told me in a note that he had already approved it, that Verinder told me in a note that it had already been approved.

Q Did you approve these interviews?

A Yes, I did.

119

Q Did these interviews indeed take place?
A Some of them did. I'm not sure that all of them did.
Q Did Mr. Verinder or another individual brief you on the results of these interviews?
A I know that a report was prepared on that, but I don't recall being specifically briefed with regard to the results.
The only action that I know that Fred Verinder advised me that they had talked to the Department of Justice and that efforts were being made to get the report back from the White House.
Q To get the report that was sent over to the White House from SBA?
A That's right. To get that back, number one, and number two, to have discussions with the SBA to tell them that these types of reports should not be disseminated without discussion with the Department of Justice or the FBI.
Q Did you know if there were any attachments to the report?
A No.

120

Q So you did not know if any attachments were transferred to the White House?
A No, I did not.
Q The discussions with the SBA with respect to the transfer of this report, can you explain why those discussions were needed; that is, why should this information not be shared with the White House?
A We wanted to make sure that -- we had an ongoing criminal investigation. We wanted to make sure that there was no information being disseminated regarding a pending investigation which could in any way affect that investigation.
Q You stated you wanted to prevent the information from being disseminated in any way which could affect the investigation. How would the transfer of documents to the White House affect the investigation?
A It may not, but during a criminal investigation, you don't disseminate any information about the investigation itself.
Q You noted that this report may have been prepared at the request of Congress. Would such

121

dissemination of information or the preparation of this report to Congress have been an improper dissemination of information regarding the investigation?

A It may have been one that we would also have been concerned about if it affected the ongoing investigation itself, yes.

Q And to your knowledge, do you know if these discussions with the SBA took place?

A I believe that they did. I feel confident that they did, but I'm not sure who did it.

Q Other than this transfer of documents to the White House and their subsequent retrieval, do you have any knowledge of any other contacts or briefings or transfer of documents between the SBA and the White House?

A No, I do not.

Q You have not heard of any allegations about or investigations into any contact Mr. Erskine Bowles may have had with the White House?

A I don't recall that, no.

Q Do you have a recollection as to who the

122

individual was at the SBA who initially received the request from the White House?

A I'm sorry. I don't remember the name.

Q Or the individual from the White House who made the request to the SBA?

A I believe it was Mr. Eggleston, but I'm not completely confident on that.

Q Moving on now with respect to the additional referrals, the second set of referrals to which you testified to earlier, you had mentioned during your answer to one of Mr. Gicale's questions that there were discussions that you became aware of sometime in September and October of 1993 regarding a delay in the referrals that were coming.

A Yes. We had been told that there were additional referrals coming, and we had anticipated that that would happen a lot faster than when it did.

Q Do you know who told you or a representative of the FBI that the referrals were coming?

A I'm sure it would have been Fred Verinder

123

who told me.
Q Do you know who he got this information from?
A I do not.
Q Did he talk to you regarding what was the cause of the delay in the referrals?
A No.
Q Did you subsequently have any knowledge with respect to the cause of those delays?
A No, because I believe in October we were able to -- let me go back. I do remember that there were some discussions about some resource problems that RTC had at that time in terms of being able to get the referrals out as fast as they wanted to, but that's the only discussion I remember, and I am not sure how solid that is.
Q Specifically, do you recall what the resource problems were or where --
A Not enough.
Q -- or where within the RTC there were these resource problems?
A At Kansas City, I think.

124

Q But nothing substantively within the divisions within Kansas City?
A No.
Q Did you have any discussions with Mr. Verinder regarding any problems the FBI or the Department of Justice may have been having with respect to the production of any documents from the RTC to the FBI or the U.S. Attorney's Office with respect to Madison Guaranty?
A Again, I think it was that there were some discussions about that, yes. I don't recall the specifics or when that occurred.
I know that there came a time -- I'm unable to place the time -- October-November time frame when there was a meeting that occurred, and I think it occurred in Kansas City with FBI personnel from Little Rock and maybe Department of Justice attorneys, in which they sat down with RTC and discussed production of documents and how it would occur. It was a very favorable -- it worked out very favorably in terms of getting that done.
Q Do you know what prompted this meeting?

125

A I think it was just simply a desire for us to find out what kind of volume we were talking about and when they were going to come, for planning purposes, and so that we could get on with making sure that we got resources to Little Rock to handle it.

Q This was subsequent to the receipt of the second set of referrals, I take it?

A I would assume so, yes.

Q Prior to this meeting at which you said the favorable resolution was achieved, did you become aware of any complaints that the FBI may have had with respect to the speed or volume of production that the RTC was making in response to any subpoenas or requests?

A No.

Q One more thing about this period. You may have testified to it, and I just want to make it clear. How did you come to find out about the October 11th declination letter from Paula Casey to Jean Lewis?

A I can't recall.

126

Q Now, in your position, you were responsible at least in a management role for all the criminal investigations with respect to -- that the FBI was conducting?

A That's correct.

Q At around this time -- of course, July 20th, 1993 was about the time that Mr. Foster passed away.

A Right.

Q Did you come to have any knowledge of any investigation or participation in any investigation that the FBI was conducting?

A Yes.

Q Was it a separate set of investigators who were conducting those investigations?

A Yes, as far as I know, they were.

Q Was there any discussions within the FBI that you were aware of with respect to the coordination of these investigations, these separate investigations all relating to the events relating to Madison Guaranty or the White House or officials?

A No.

127

MR. DINH: I have nothing further.

EXAMINATION

BY MR. SCHAUER:

Q Mr. Potts, it is not my intent to go over anything you testified to earlier. I am going to just focus on this later period and I just want to follow-up in a few areas. It may be the fact that I will have to go over a few things that you did testify about, but I will try and be brief.

You testified earlier that, if this characterization is fair, that you refocused on Madison-related issues in May 1993 when you learned of the Hale investigation, the investigation into David Hale and Capital Management; is that correct?

A That's correct. I mean, I became aware that we were conducting an investigation, I believe an SBA referral that initiated that investigation, and I became aware that we were doing that, executing a search warrant, and that Hale was in some way associated with the McDougals.

Q That's what I wanted to focus in on. You testified that someone told you that Hale was

128

associated with Mr. McDougal. Do you recall who told you that?

A I don't. I mean, I believe it would have obviously been somebody at FBI headquarters. It would have been Tom Kubic or Fred Verinder or someone.

Q Did you have an understanding either from Mr. Kubic or Mr. Verinder that Mr. McDougal was also a focus of this SBA investigation?

A No.

Q The connection in your mind was that you had heard they were associates?

A Right.

Q Did there come a point where you made a closer connection between Mr. McDougal and Mr. Hale?

A When they opened up the bank fraud case, which I think was shortly after that, August or September. When they opened the bank fraud case, I think McDougal and Hale were both subjects in that.

Q Were you aware at the time of any other investigations that involved David Hale or Capital Management?

129

A No.
Q Regarding Ms. Casey's recusal, you testified earlier that you had heard that the director had expressed his opinion that the recusal could have happened at an earlier date; is that correct?
A I don't know that he said the recusal. I do recall him making a statement that the decision could have been made sooner.
Q And by that, you understood the director to mean Casey's decision that she would recuse?
A Right.
Q But you didn't understand it to mean the announcement of Casey's recusal?
A No, just that the decision to recuse could have been made earlier.
Q And I think you testified earlier that the director did not express an opinion that that decision being made later affected the investigation.
A No. It was pretty much just a side comment by him that that decision could have been made

130

earlier but no indication that it affected the investigation.
Q Did anyone ever express to you the opinion that the decision on the recusal affected the investigation in any substantial way?
A No.
Q In any way whatsoever?
A No.
Q Did you have that opinion?
A No.
Q Did anyone express to you the idea that if Ms. Casey recused earlier, it would have set a precedent by which people who were accused or people -- let me withdraw that question.
Did anyone express the view that if Ms. Casey had recused earlier, it would have set a bad precedent for the Little Rock United States Attorney's office because in any major case down there, it would invite allegations by the person being investigated that they had knowledge of wrongdoings?
A I never heard that before.

131

Q Turning now to the matter of the transfer of documents from the SBA to the White House. When you were given names of individuals that Mr. Verinder had requested the authority to interview, did you have a specific understanding of why those individuals were named?

A I believe it was because it was general counsel's -- White House counsel's office that needed to be talked to, just to determine what the purpose was of obtaining the documents. I believe that most all of those people are associated with the White House counsel's office.

Q So, it was not your understanding at that point that the individuals were selected because of actual knowledge of the events or actual involvement in the events?

A I believe that they were selected because they may have knowledge but not that they definitely did.

Q Just to be clear, one of those individuals may have been on the list but ultimately turned out not to have knowledge or involvement?

132

A That's correct.

Q When you testified earlier about the concern that you and the Department of Justice had in the transfer of documents from the SBA to the White House, you mentioned that the concern was a general concern about impeding an ongoing criminal investigation.

Did you ever come to learn that any documents in the transfer ultimately impeded in any way the criminal investigation that was ongoing?

A No, I did not.

Q Did you or anyone else in the Department of Justice, including the FBI, have a specific concern about the White House having these documents that was independent of the concern about impeding the investigation?

A That's a difficult question to answer. First of all, I don't know about anyone else in the FBI. I believe that Fred Verinder, when he and I discussed it, our concern was that I didn't know what was in the documents, that we did have an ongoing criminal investigation and it was very inappropriate

133

for SBA to disseminate anything without dealing with us and the Department of Justice.

Q So, it was your position that SBA providing the report to Congress, from which it was originally requested, raised the same exact concerns as the request for documents?

A Absolutely. I believe it would have been inappropriate for them to do that, frankly, without allowing the prosecutors in the case, investigators in the case to look at it and see if such dissemination would affect the case and if there needed to be some caveats placed on the dissemination of the report to Congress.

Q Just one further question. Regarding the meeting in Kansas City about which you testified in which FBI agents -- and I think you testified that United States Attorneys attended this meeting in Kansas City.

A I think I said DOJ attorneys. I believe it was DOJ.

Q That's my question, just to pin down the timing a bit.

134

Was it people from Mr. Mackay's team or was it people from the Little Rock United States Attorney's office?

A I believe it was Mr. Mackay's team.

MR. SCHAUER: That's all I have.

EXAMINATION

BY MR. DINH:

Q I just have a couple of quick questions.

By November 1993, when the transfer of documents to the White House -- you came to find out about the transfer of documents to the White House, you testified that you were aware from prior conversations or briefings by Mr. Verinder that the Clintons were potential witnesses at least with respect to the Hale case?

A Correct, with regard to the first referral.

Q With respect to the first referral.

A Right.

Q What about -- by the "first referral," you mean C0004?

A That's correct.

135

Q What about the referral with respect to the SBA allegations against Capital Management?
A I don't know whether I knew that the Clintons were potential witnesses there or not.
Q Right. But you testified earlier to knowledge that Mr. Hale had made allegations with respect to politicians in Arkansas?
A That's correct.
Q And --
A Well, he was indicating that he had information that he wanted to share.
Q And this was -- you came to this knowledge as part of the proffer discussions with respect to the U.S. Attorney's Office in Little Rock?
A Sort of, that and the media accounts where Mr. Hale was talking to the press and handing it out.
Q So, you had knowledge that the Clintons maybe, at least were alleged to have been implicated by Mr. Hale's information?
A Yes. I wasn't sure in what.
Q Does that raise a particular concern in

136

your mind with respect to the transfer of documents to the White House?
A Yes. I do think that that certainly makes the transfer of documents even more sensitive and something that the White House would not have wanted to have.
Q I just want to differentiate the dissemination of information to the Congress as opposed to dissemination of information to the White House. Any dissemination of information you may have a basis to object to.
A Right.
Q But with respect to dissemination of information to the White House, you had particular sensitivity to that particular transfer?
A Yes, and I believe Congress did, too.
Q You testified earlier that you talked with Mr. Jim Hamilton during the transition.
A Right.
Q Do you know what his position or unofficial position during the transition was?
A As far as I knew, he was the head of the

137

transition team for the administration, the new administration.
Q And did you subsequently have any more dealings with Mr. Hamilton with respect to the Whitewater case or Madison Guaranty case?
A I don't recall any dealings with him on Madison and Whitewater at all, just with regard to transition.
Q Did you have any conversations with Webster Hubbell regarding Madison Guaranty or Capital Management?
A No. I don't recall having any with him.
Q I'm going to show you an exhibit Bates stamped GRO 001706. It is a photocopy of Mr. Hubbell's message slips dated 2/10.
A Yes.
(Witness examined the document.)
MR. SGRO: Any year on that?
BY MR. DINH:
Q Can you read the substance of that message for me?
A This is 2/10, 5:47 p.m. from Director

138

Sessions. It says the contact person you are looking for is Larry Potts. He can be reached at 324-4260. This is regarding a need you spoke to him about earlier."
Q Do you recall talking to Mr. Hubbell at around this time?
A No, I don't. I don't have any idea what that was about.
Q You don't recall if he called you or not?
A No.
Q Do you recall any discussions with Mr. Nussbaum at the White House regarding Whitewater, Madison or any of the matters that we have been discussing today?
A I don't recall having ever spoken to Mr. Nussbaum about anything.
Q I'm going to show you exhibit FBI 3436. It is a page from an unidentified person's schedule book, it looks like.
(Witness examined the document.)
BY MR. DINH:
Q It is a daily calendar for Wednesday,

139

November 24, 1993. Can you read the 9:00 a.m.?
A "Accompany Director and Potts to meeting with Commissioner Weiss, Customs."
Q Do you recall such a meeting with the director and Commissioner Weiss? This is dated November 24, 1993.
A I do recall a meeting with Commissioner Weiss. Whether or not it was this date or not, I don't know. I remember going with the director to Commissioner Weiss's office and meeting with him.
Q Do you recall what the general substance of the meeting was about?
A Cooperation between FBI and Customs, Title XXI authority for Customs. That was the primary focus, as I recall. Again, I can't tell you -- this particular meeting I can't tell you that that's what that one was about.
Q Do you remember having any discussions with Commissioner Weiss regarding anything called the Blue Coal case?
MS. SIMONTON: Can I have a minute with him?

140

(Counsel conferred with the witness.)
THE WITNESS: I'm sorry. I don't know what that is.
MR. DINH: I have nothing further.
EXAMINATION
BY MR. SCHAUER:
Q I have one more question.
You testified earlier about your ongoing knowledge of the status of plea negotiations with Mr. Coleman and the Little Rock United States Attorney's office.
A Mr. Coleman is the attorney for --
Q Mr. Coleman is the attorney for Mr. Hale.
Did anyone ever indicate to you that those negotiations were being handled in any improper way by the Little Rock United States Attorney's office?
A No, not in any improper way. I think there was frustration that it wasn't being brought to some finality. But there wasn't -- there was never an allegation made to me that there was an improper approach or any sinister motivation there, just that it wasn't being brought to a conclusion. That was

the frustration.

Q Were you aware that Ms. Casey or the Little Rock United States Attorney's office was insisting on a felony plea for Mr. Hale?

A Probably I was aware of that, yes.

Q Did anyone express that that was improper for them to make that demand?

A No, I don't believe so.

MR. SCHAUER: That's all I have.

(Whereupon, at 12:56 p.m., the deposition was concluded.)

LARRY A. POTTS

CERTIFICATE OF NOTARY PUBLIC & REPORTER 142

I, BRENDA M. SMONSKEY, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Brenda Smonskey

Notary Public in and for the
District of Columbia

My Commission Expires SEPTEMBER 14, 1996

DEPOSITION OF WILLIAM P. BARR
IN RE: S. RES. 120

MONDAY, NOVEMBER 13, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Telephone deposition of WILLIAM P. BARR, called for examination pursuant to notice of deposition, at 5:15 p.m. in Room 640–A of the Hart Senate Office Building, before DAVID L. HOFFMAN, a Notary Public within and for the District of Columbia, when were present:

LOUIS J. GICALE, ESQ.
Majority Deputy Special Counsel
RICHARD BEN-VENISTE, ESQ.
Minority Special Counsel
LANCE COLE, ESQ.
Minority Deputy Special Counsel
ANDREW M. SCHAUER, ESQ.
Minority Assistant Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

CHARLES J. SGRO, ESQ.
U.S. Department of Justice
Tenth Street & Constitution Avenue, NW
Washington, DC 20530

ALAN COHEN, ESQ.
O'Melveny & Myers
555 Thirteenth Street, NW
Suite 500 West
Washington, DC 20004–1109
On behalf of the Deponent.

CONTENTS

WITNESS	EXAMINATION
William P. Barr	
by Mr. Gicale	3
by Mr. Cole	28
by Mr. Ben-Veniste	58

3

PROCEEDINGS

Whereupon,

WILLIAM P. BARR

was called as a witness and, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. GICALE:

Q Please state your name for the record.

A William P. Barr.

Q Your present business address?

A One Stamford Forum, Stamford, Connecticut, 06904.

Q Mr. Barr, where are you presently employed, and in what position?

A The general counsel at GTE Corporation.

Q Now, in 1992 through January 20, 1993, you were Attorney General of the United States, correct?

A Until January 15.

Q 15th, 1993?

A From November '92.

4

Q November '92 or November '91?

A '91, right. Sorry; thank you.

By the way, thank you for accommodating my schedule.

MR. COLE: Thank you for agreeing to do this by telephone on short notice. We very much appreciate it.

BY MR. GICALE:

Q Mr. Barr, pursuant to the Committee's request, did you have the opportunity to review any documents in preparation for your deposition, or determine whether or not you have any documents?

A Yes. I looked through my records. I didn't look at documents to prepare.

Q You looked through records that you have with respect to this issue?

A No. I looked through my records to see if I had responsive documents to the subpoena, which I do not. I did not look at any documents to prepare.

Q Did you speak to anyone other than your counsel with respect to the substance of your testimony here today?

5

A No.
Q Mr. Barr, when did you first hear of a -- well, first of all, let me back up.
This deposition is being conducted pursuant to Senate Resolution 120. The resolution establishes a Special Committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings and Loan Association, Capital Management Services, Inc., the Arkansas Development Finance Authority, and other related matters.
Section 1(b)2(c) of Senate Resolution 120 authorizes an investigation and public hearings into whether the Department of Justice has improperly handled RTC criminal referrals relating to Madison Guaranty Savings and Loan Association or Whitewater Development Corporation. That will be the focus of today's deposition.
MR. COHEN: Thank you, Lance. We have a copy of the resolution.
BY MR. GICALE:
Q This deposition is being taken in advance

6

of the public hearing, which will continue tomorrow and continue on through the balance of this week. The stenographer will prepare a record of questions and answers. The deposition will be treated as committee confidential until the commencement of the hearings.
Prior to the hearings, you will receive a letter from the Senate Committee telling you that you may come to the Senate to review the transcript of your deposition, and make notes of any corrections for transcription on an errata sheet. If you need to make some other provisions for that, we can attempt to work that out as well.
MR. COHEN: As you know, we need to make some other arrangements for that, because of Mr. Barr's unavailability, really for the rest of this week, which is the reason for this phone deposition.
So really, after the conclusion of this, we can work that out.
MR. COLE: Just so the record's clear for the witness, and for counsel who's not here in the room with us, Mr. Gicale has been asking the

7

questions now, and will proceed first for the majority. And then I, Lance Cole, will follow him.

So, Alan, that was Lou Gicale who's been speaking.

MR. COHEN: Splendid. I got that one wrong.

BY MR. GICALE:

Q You are represented by counsel, Mr. Barr. Objections to the form of questions will be noted for the record. Counsel may object on grounds of privilege or relevance. The Committee Chairman may rule on objections where the witness refuses to answer a question.

With respect to criminal referral C0004, Mr. Barr -- when did you first hear, Mr. Barr, of an RTC criminal referral relating to Madison Guaranty, Whitewater Development Corporation, or the Clintons in 1992?

A I don't know what C0004 is. But I first was informed of the referral on Madison, I believe, by Ira Raphaelson either in late September or early October.

8

Q What did Mr. Raphaelson tell you about it? Did he give you any details with respect to it?

A Your question is, when did I first learn of the existence of it?

Q Well, when did you first hear that there might be a referral relating to Madison Guaranty or Whitewater Development Corporation, or with respect to the Clintons?

A Well, the first I heard of a referral was from Ira.

Q Did you ask Ira some time in late August or September to determine whether or not such a referral existed at the FBI?

A I'm not sure it was August. But there was a point, I believe, in September or October where I asked Ira to determine whether a matter had come into the department relating to an S&L.

Q Did you have the name of the S&L at that point?

A I don't know. I don't remember.

Q Had you received some information prior to discussing this with Mr. Raphaelson from someone?

9

A I wouldn't say "information," no.
Q Did anyone indicate to you that such a referral with respect to such an S&L perhaps existed at that point in time?
A Well, I don't believe the term "referral" was used. But someone asked me a question about the process at the department, which led me to make the inquiry of Ira.
Q I'm sorry, I didn't hear that.
About process at the department?
A Right. No one gave me information. But someone asked me a question about procedure at the department, which led me to ask Ira to check on something.
Q Aside from asking about procedure, did that someone indicate the individuals involved and the procedure or process that might be involved?
A No.
Q Who was the someone who asked about the procedure?
A Edie Holliday, who was cabinet secretary.
Q Is that Mr. or Mrs. Holliday?

10

A Miss.
MR. COHEN: Why don't we go with "Ms.?"
BY MR. GICALE:
Q What did Ms. Holliday say to you?
A On September 17, I was on a plane trip with Edie Holliday to Atlanta. There was some kind of ceremony involving the Olympic Games, or Atlanta's pursuit of the Olympic Games, there. And during the flight, we were chatting about a number of different things.
And during that conversation, she said to me that she wasn't asking for any information from me; in fact, didn't want any information conveyed to her and wasn't asking me to do anything. But she wondered, would I be aware if some matter involving one of the candidates was pending in the Department. And I said, "Absolutely."
You know, she didn't pursue it, but I started brooding about that, and thinking, and wondered whether she had heard some kind of rumor about something in the department, or whether -- I wanted to get a fix on, you know, what she might be

11

referring to. Because I was not aware of anything in the department relating to the candidates. And the way she asked the question, what jumped to mind was President Bush. I thought she might be referring to Silverado or something like Silverado. And I started wondering whether there was something there that I had missed in one of the urgent reports.

So I went back at her and I said, "You know, Edie, I'll take responsibility for the discussion here. But are you talking about Silverado or something like Silverado?" And she said, "No. I was referring to the other candidate."

I mulled that over for awhile, and I asked -- because I wasn't aware of anything like that, and I started getting concerned, again, that I'd missed something that had come in on an urgent report, if there was something there that I hadn't been told about. So I wanted to try to get enough info that I could quietly go back and check myself.

And so, I asked her, "What type of matter would you be referring to?" And she said, "S&L matters."

12

That was the extent of the conversation. But that led me later, when I was talking to Ira back in his apartment, I asked him if he would check and see if there was a case involving an S&L that might involve the Clintons.

I also reviewed my own urgent reports to see if I had missed something that had come in. Urgent reports are reports that all components, including U.S. attorneys, are supposed to send to the Attorney General on any kind of sensitive matter, or any matter involving a public figure. A lot of them come in, and some of them are quite long. So I reviewed a number of them to see if I had missed one.

Q After discussing this with Ira Raphaelson, did he indicate to you that he would contact the FBI to see whether or not such a referral existed?

A Well, first he said that he hadn't seen any such thing. My impression of Ira was that he was very much on top of these cases, as he was required to be. And he drew a blank on it, and suggested that he could check our automated system. And I'm not really up to speed on what that involved. My

13

impression was that we had some kind of computer system that monitored all of the S&Ls, resources and priorities and so forth. I think he indicated that this would require him talking to someone at the FBI.

I told him that I wanted the matter kept strictly confidential. At this stage, I only wanted to know -- I didn't want any action taken to suggest that we were attempting to accelerate, decelerate, or in any way influence the handling of the case. As far as I was concerned, it should be handled in the ordinary course, and he should be careful not to have contacts that would suggest otherwise.

He assured me that the professionals at the FBI were appropriate people to just determine if the thing existed.

Q Did he determine whether or not it existed?

A He came back to me and said there was no such case.

Q Now, was there a subsequent conversation you had with Mr. Raphaelson where you again asked him whether or not -- to check again to see whether or

14

not such a referral existed?

A Yes.

Q When was that?

A It could have been a week or two after the original discussion.

Q And what prompted the second request?

A It could have been shorter, but I don't know.

My general impression -- I asked him to double check.

Q When he checked the second time, what if anything was his response?

A He said that in fact, there had been a referral down in Arkansas, but it had not been reported. In fact, it appeared that the office had withheld it from headquarters.

Q Which office?

A The U.S. Attorney's office.

Q Did you give him any further instructions with respect to the handling of it?

A I basically said that I was very angry that a matter which I viewed as a sensitive matter,

15

that should have been reported to the Attorney General, was deliberately withheld from the Attorney General. So I was angry, and expressed my displeasure, and said that I'd be interested in knowing why an urgent report was not prepared for me, and why I was not advised of this case, and why it had been deliberately withheld.

But at the same time, I did not want the matter to be disclosed publicly. There would be absolutely no leaks of this, and therefore it should be tightly held. And that again, I wanted the case handled in the ordinary course, based on the merits. I didn't want anything said or done that would suggest that there was an attempt to officially expedite the case or improperly influence it.

Q As a result of that, did you give any further instruction to Mr. Raphaelson?

A At that point, I don't think I did. I wanted to make sure that the case was being properly handled. The fact that it was suppressed initially did not mean that there was something improper going on, but I did not want to dictate how it was going to

16

be handled. I didn't want headquarters to do that. I wanted the FBI to make an assessment of the case.

Q Now as a result of that, did Mr. Raphaelson go to the FBI, or have any conversations with the FBI or Mr. Mueller, or anyone else at the department, about some form of limited investigation?

A I can't tell you what he did. But I can tell you what my understanding was.

My understanding was, and I gave instructions that everyone was to be made very clear, to keep it very tightly held, and that we had no opinion of the merits of the case. And we didn't want anything done specially in the case; just handle it in the ordinary course, according to its merits. And that that instruction was to be conveyed. It's my understanding that that was conveyed.

It's also my understanding, and was my impression at the time, that the Bureau felt the limited inquiry that would not involve any public disclosure of the existence of the matter was appropriate, basically reviewing documents that were already available to the United States Attorney.

17

That was my understanding of the status.
Q How was that information conveyed to the Bureau, or whoever was to conduct this review?
A I don't know. I assume there were meetings. I assume Ira talked to people at the Bureau, and I assume he talked to Mueller, and I assume they both talked to people.
Q Did you talk to anybody at the Bureau about it, or the U.S. Attorney's office in Little Rock?
A I did not talk to anyone at the U.S. Attorney's office, and I don't recall talking to anyone at the Bureau.
Q Do you recall at some point, subsequent to giving Mr. Raphaelson these instructions, that he reported to you that indeed, a review had occurred of some sort?
A No, I don't recall him telling me.
Q What, if anything, did he tell you had occurred with respect to it? Did he tell you about any further discussions?
A My understanding was that the Bureau and

18

the U.S. Attorney had agreed that further investigation was necessary, and the Bureau was going about that task. You know, the professionals were out handling the matter, but doing so in a discreet way.
Q Do you recall a point in time when Mr. Banks sent a letter to Mr. Pettis with respect to the status of his review of the case?
A At some point, we got an urgent report from the U.S. Attorney's office, a much-delayed one.
Q That would have been on October 7, 1992?
A I think that's the right date. But it was not signed by the U.S. Attorney. It was signed by someone whose name begins with a "D."
Q Mr. Dodson?
A That sounds right.
Q After you got that report, was there some further discussion about it?
MR. GICALE: Mr. Barr, before we go further, Mr. Ben-Veniste from the minority counsel has just come into the room, and I just wanted to let everyone know that he was here.

19

MR. BEN-VENISTE: Good afternoon. How are you?

THE WITNESS: Hello.

BY MR. GICALE:

Q After you received the report from Dodson, was there any further discussion with Mr. Raphaelson or anyone else about the matter at that point?

A At which point?

Q After you received a copy of the urgent report on October 7?

A I recall that there was discussion of the fact that the report said that further investigation was warranted. I recall discussion with somebody -- it may well have been Ira -- who was showing me the referral, standing up in my office showing me the referral.

He pointed out the Clintons, and said something to the effect that the U.S. Attorney's office description of the Clintons as mere witnesses was cutting them a lot of slack, or was the charitable thing; or that, on the face of the referral, that more work would have to be determined

20

to see if they were actually going to end up as subjects in this matter.

Q Did Mr. Raphaelson indicate what type of additional work needed to be done, or whether or not there would be further consultation with the FBI with respect to the work that would have to be done at that point?

A My impression was that Ira was not insinuating himself into the handling of the case. It really was a matter left to the local Bureau and in the field at that point. But you'll have to ask Ira.

Q After that October 7 urgent report, was there anything else that occurred with respect to that referral prior to receiving a copy of the Banks letter to the SAC, Pettis, on October 16, 1992?

A At some point, someone came into my office with a letter that was written by the U.S. Attorney down there, Banks, and showed me a part of the letter where he's suggesting that any effort to push him along or something of that sort could be political.

I remember that there was a discussion

that no one was asking him to do this, and suggesting that his whole tone was completely out of line.

Q Did someone reference the fact that he had been requested by the FBI to give some type -- strike that.

Did someone reference the fact that the FBI had been given some deadline, a deadline of October 16, to complete their initial review of the matter?

A I don't recall that. My recollection was that the Bureau wanted some kind of review of documents, and specifically wasn't asking the U.S. Attorney to take any kind of public step, like issuing subpoenas or things like that. And he came in with this blunderbuss letter suggesting that if he took public steps that no one was asking him to take, that it would mean disclosing the matter before the election and describing or suggesting that someone could ascribe that notice to the FBI.

My understanding was, or at least I was told, that no one was asking him to do what he was suggesting, and that the letter was out of line. I

view the letter myself as essentially Banks trying to cover his tracks from the fact that he had suppressed the information from the original.

Q Earlier, you mentioned the fact that Banks did not send you an urgent report when the referral first came to the department.

Can you just briefly describe to us what the criteria would have been at that point in time for sending an urgent report to the Attorney General?

A The criteria is really anything which involves -- well, includes anything that involves a public personage, a celebrity or any kind of sensitive case that can involve, for example, public officials in the state, those kinds of things.

It's inconceivable to me that any U.S. Attorney would not immediately understand that this case would require an urgent report.

Q So you subsequently learned that Mr. Banks had received this in early September, but did not report this to you until October 7, 1992. Is that correct?

A He only reported it to me when it had been

23

confirmed that he had the case and was suppressing it from me.

Q After receiving this letter and having this discussion, did you have any further involvement with respect to this referral?

A No. When I left the department, it was my understanding that the U.S. Attorney's office and the FBI pursued the matter, and that there were people in the criminal division who were aware of the matter. And so, I was confident that it was not going to be covered up. It would continue to be pursued.

Q Do you know whether or not any steps were taken between the date of this letter, October 16, 1992, and the day you left in January 1993, to pursue the investigation of this matter?

A You know, I really don't know. My impression was that there was some kind -- that, you know, there was some disagreement between the FBI and the U.S. Attorney's office, but my understanding was that, you know, that had been surmounted or mooted and that the matter was being handled appropriately.

Q After receiving a copy of Banks' letter on

24

October 16, 1992, did you have any discussions with anyone?

A Let me just make -- I don't know if I received the letter. My recollection is that someone walked in with a copy of the letter and showed me a part of the letter, and pointed out there were a few paragraphs that there was commentary on.

Q Do you know who it was that brought that letter in?

A I can't remember.

Q Do you know who was present when they brought the letter in?

A No, I can't remember. I just remember looking at certain paragraphs.

Q After those paragraphs in that letter, or some of the paragraphs in that letter, were brought to your attention, did you have any further contacts with anyone at the FBI with respect to the referral?

A I don't recall talking to anyone at the FBI about the referral.

Q Did you have any contacts with anyone at the RTC with respect to the referral?

25

A I never had contacts with anyone at the RTC about the referral.
Q Did you have any further contacts with anyone from the White House with respect to the referral?
A No.
Q Do you have any knowledge of any contacts between a member of the department and the White House regarding this referral?
A Excuse me. Members of who?
Q Members of the department -- Justice -- and the White House regarding this referral.
A Since when?
Q From the time that you had that initial conversation with Holliday to the time that you left the department in January 1993.
A I had a conversation with Edie Holliday after my initial conversation.
Q When would that have been?
A Some time after Ira came back and told me there was no such case. And the subsequent time I was talking to Edie Holliday, she was the cabinet

26

secretary. And we typically talked a number of times a week.

And after going over some items that had precipitated the discussion, I said to her -- I reminded her of the question she had asked me earlier, and said this appeared to be rumors that were completely baseless.
Q Was that the only other conversation you had with her about it?
A Those are the only two conversations I recall having with anyone outside the department.
Q Do you have any knowledge of any improper handling within the Department of Justice of this criminal referral?
A Absolutely not, not during my tenure. In fact, I believe it was very properly handled.

The fact is, we had this information a month before a very close election, and we were able to keep it from getting out into the public in a way that ought to be encouraged.
Q Do you know who else was aware of it in the Department of Justice at the time you found out

27

about it in late September or early October, besides Mr. Raphaelson?

A I believe my chief of staff. I know my chief of staff was aware.

Q Who was that?

A Dan Levin.

Q Anyone else?

A I assume -- well, I shouldn't assume. But I believe Mueller was aware of it. I don't recall talking with Mueller, but I believe he was aware of it.

Q What about Mr. Terwiliger?

A I believe I may have informed Terwilliger. But I don't believe he really was involved in these discussions. I just may have advised him and told him to keep his mouth shut.

MR. GICALE: Can I just have one moment? I think I'm just about done.

(Pause.)

I have nothing further at this point. I believe either Mr. Ben-Veniste or Mr. Cole may have some questions for you.

28

EXAMINATION

BY MR. COLE:

Q Yes, Mr. Barr. This is Lance Cole, one of the minority counsel.

Going back to your original discussion on the airplane with Ms. Holliday, Mr. Barr, when did that discussion occur?

A September 17.

Q Is there a record or document that confirms that date?

A It's my recollection that it was on the trip to Atlanta.

Q Is there anything that you could provide to the Committee, or that the Committee could request from another source, that would confirm your recollection as to the date?

A Let me think.

(Pause.)

My official calendar has me going to Atlanta that day. I don't recall it saying anything about who else was on the trip, and it certainly doesn't reflect any discussion. In other words,

29

there's not going to be any secret that I would put in there.

Q And Ms. Holliday was the cabinet secretary to the President of the United States, is that correct? Was that her position?

You referred to her as the "cabinet secretary."

A Yes.

Q When you first spoke with her about this matter, did she say anything to indicate to you why she was asking you the question?

A No.

Q Did you subsequently come to have any knowledge as to why she asked you the question, from any source?

A No.

Q Mr. Gicale asked you if you ever discussed this matter with anyone in the White House, and I believe your answer was that you had not, other than Ms. Holliday.

Is that correct?

A That's correct.

30

Q Do you have any knowledge as to whether Ms. Holliday ever discussed this with Boyden Gray, who was then counsel to the President?

A I have no knowledge.

Q I'd ask the same question about Mr. Albert Casey, who was the chief executive of the Resolution Trust Corporation at that time.

A I have no knowledge.

Q Can you give us your best recollection, as exactly as you can recall it, what Ms. Holliday said to you when she first raised this issue?

A I've already told you.

Q It would be helpful if you could tell me exactly what words she used.

In other words, did she say "Bill Clinton?" Did she say "Bill and Hillary Clinton?" Did she say "a bank in Arkansas?"

If you could just repeat your best recollection of what she said to you.

(Pause.)

A Again, I can't remember the exact words. But my best recollection of the substance was, would

31

you be aware that there's a matter involving one of the candidates, or the candidate's family, that was pending in the department? And when she used the term "family," it made me think she was referring to the Bushes. The Silverado matter was something obviously that had come up, since it involved one of the Bush boys.

Q Was it in the same plane trip that then you went back to her and asked her if she was referring to the Silverado matter?

A Yes.

Q You said you mulled the matter.

A Yes. It was during the same trip. I reraised the subject with her.

Q What was her response when you asked her that question?

A She said she was referring to the other candidate, or words to that effect.

Q I believe you testified that you then asked her what kind of matter. Is that correct?

A Correct.

Q What did she say?

32

A My best recollection? She said, "An S&L matter."

Q Did she say anything further to describe the kind of matter?

A I don't recall.

Q Did she say anything to indicate the location of the matter, what part of the country?

A I can't recall, but my assumption was it was Arkansas. I can't recall if that was based on something she said, or just my assumption.

Q At that time, Mr. Barr, were you aware of the matters that had previously been reported in the newspaper, particularly the New York Times, about Whitewater Development Corporation and the Clintons?

A I was vaguely aware of something about financial irregularities, but I can't remember when I was aware of it, or the specifics.

Q Did you make any connection in your own mind when she asked you about this to the Whitewater matter?

A I really can't recall if I did. I don't think so.

33

Q Did Ms. Holliday say anything further to you that would have related to her source of information?
A This is the substance of the discussion that I recall, that I just related.
Q And your purpose in going to Mr. Raphaelson was because you believed that if such a matter was in the department, it should have been brought to your attention. Is that correct?
A Absolutely.
Q Why did you go to Mr. Raphaelson with this particular question?
A He was in charge of all financial institution cases.
Q Did Mr. Raphaelson suggest to you that he could check an automated or computer data base, or did you suggest that he do so?
A My best recollection is that he mentioned the possibility of checking it, although I think I was aware of this also, and it's conceivable that I mentioned it.
Q How long after your discussion on the

34

airplane with Ms. Holliday did your discussion with Mr. Raphaelson take place?
A I don't know. It would have been a matter of days, or a week.
Q How long were you in Atlanta?
A A day.
Q Do you recall what day of the week the trip to Atlanta was?
A No.
Q Do you recall whether or not you returned to Washington to your duties at the Justice Department immediately after that trip?
A I can't remember.
Q I take it you reviewed your calendars in response to the Committee's subpoena, and you haven't found anything further that would refresh your recollection as to the timing of these events?
A That's right.
Q Did you or your counsel produce to the Committee the calendar entry that you just referred to that referenced the Atlanta --
A No.

35

MR. COHEN: But if you want it, you can have it. It doesn't really relate to it, other than it's a reminder of what day he traveled. If you want a copy of the page --

MR. COLE: If you could do that, we would appreciate that.

MR. COHEN: I'll fax it down to you.

THE WITNESS: You probably won't get it for awhile.

MR. COHEN: When do you need it by, Lance?

MR. COLE: If you could fax it to us the latter part of this week or the early part of next week, that would be fine.

MR. COHEN: Okay, because he's going to be unreachable.

MR. COLE: Before Thanksgiving. That would be helpful.

BY MR. COLE:

Q How long, Mr. Barr, after you had the discussion with Mr. Raphaelson about checking the data base, was it before he came back to you and told you that he had found nothing?

36

A I can't recall.

Q Do you have an estimate?

Would it have been a matter of days, weeks?

A It wasn't weeks. But beyond that, I couldn't say.

Q My impression of Mr. Raphaelson was that he was quite efficient. So I would assume that it was a short time, but correct me if my assumption is incorrect.

MR. COHEN: There are two assumptions in there: that Ira Raphaelson is efficient and that he got back quickly. The former is probably true. He doesn't remember about the latter.

THE WITNESS: I just don't recall how much of a gap there was in between my trip to Atlanta and my talk, my discussion with Ira. And I can't remember how long it took Ira to get back.

BY MR. COLE:

Q Do you recall whether he got back to you in person or by telephone?

A I don't recall. I assume it was in

person.
Q Was there a discussion with Mr. Raphaelson about specifically what he would check for? Was he to check for the name of the Clintons or the name of a specific institution, or what was he to do?
A I can't remember.
Q Do you remember exactly what he told you when he came back to you in terms of what he had done and what he had found?
A Are you talking about the first discussion with him?
Q The follow-up discussion, when he came back to you and told you that he had found nothing, if I understand your prior testimony correctly.
A He told me he had found nothing.
Q So he didn't tell you what he had done or who he had spoken with?
A I can't recall.
Q Did you have an understanding that he had gone to the Federal Bureau of Investigation, which technically is in the Department of Justice, but outside of the department in a sense?

A I'm not sure what you mean by that.
Q What I mean is, did you have an understanding that he had gone to the Federal Bureau of Investigation to get the information?
A At some point I became aware of that. I can't remember whether it was at this point or a later point, and how that was absolutely the right step to take. Because I felt that a direct call from me to the U.S. Attorney before I really understood what was going on, whether there was such a thing, if there was, why he was withholding it from me. I wasn't sure what a direct call would mean, or how it would be interpreted.
But I believed that the FBI would handle the matter properly, because they were career people.
Q Did you have any understanding from your discussion with Mr. Raphaelson or otherwise whether the data base or data bases available would list parties who were referenced as witnesses, as opposed to subjects for referral or an investigation?
A I don't recall.
Q And do you recall how long after your

second conversation with Mr. Raphaelson, the conversation in which he told you he had found nothing, it was that you had your second conversation with Ms. Holliday?

A No, I don't. I don't recall.

Q But your best recollection is you only had two discussions with Ms. Holliday. Is that correct?

A Yes.

Q And your best recollection is that at the time of the second discussion with Ms. Holliday, you had not obtained any information about this matter from Mr. Raphaelson. Is that correct?

A He had said there was no case.

Q I'm just trying to confirm my understanding that the second discussion with Ms. Holliday was after he had told you that he had found nothing, or that there was no case; as opposed to the latter point in time, when he told you that there was a referral.

A My discussion with her was after he told me there was no case.

Q What was your purpose in providing that

information to her?

A Basically, I thought that might be the best way of protecting the Department and keeping the Department out of the political climate.

Q What was her response when you provided her that information?

A You know, I can't remember her specific response, but I believe she sort of indicated she thought it was strange, I would say. She seemed a little puzzled, or I interpreted it as being puzzled or skeptical. And I came away from the discussion feeling that maybe she had some information, better information than I had.

Q Was there anything she said that specifically gave you that impression?

A I can't recall specifically what she said.

Q And she said nothing at that time that would have given you any sense, clue, idea, etcetera, as to what the source of her information was?

A She did not tell me whether she had information or, if she did, from where it came.

Q Was the next thing you did with respect to

41

this matter when you went back to Ira Raphaelson and asked him to check again?

A Excuse me, could you repeat that?

Q Yes.

After the conversation with Ms. Holliday that you've just described, in which she seemed puzzled or skeptical, was the next thing you did to go back to Mr. Raphaelson and ask him to check again, or did anything happen in the interim?

A I wouldn't say it was the next thing I did. At some point, I believe, I thought about it and started wondering whether indeed it was possible that someone in this Department could actually hold something from me like that.

I was concerned that if there was some hanky panky going on, that indeed someone might not send an urgent report, and it might be prudent for me to double check.

Q When you asked Mr. Raphaelson the second time how long after your second request to him was it that he came back to you with information about the referral?

42

A I don't recall.

Q Do you recall whether it was a matter of days or weeks?

A I don't think it was a matter of weeks.

Q At the time he came back to you, did he have a copy of the referral?

A No.

Q What information did he have at that time?

A My recollection is that he just came in and chatted with me. I don't think I saw the referral until quite some time later, possibly even after the hysterical letter from Banks.

Q But at the time --

Let me rephrase that.

When Mr. Raphaelson came back to you after your second inquiry of him is when he told you that there was a referral at Little Rock that had not been the subject of an urgent report memorandum. Is that correct?

A Yes. That was a case down in Arkansas that the U.S. Attorney hadn't set the record for.

Q What did you instruct him to do at that

43

point?
A We've already covered that.
Q I don't want to mischaracterize your prior testimony, but my recollection is that you wanted to have the FBI review the referral. Is that correct?
(Pause.)
A Actually, I think my instructions to them were, number one, keep it secret, and if there was a leak of this thing, I wanted the list of people who knew about it very, very small, so I could flay them alive.
Number two, that I was interested in why I didn't get an urgent report, and this raised in my mind some concern that there might be some hanky panky going on down in Arkansas, and I wanted to ensure that the matter was being handled strictly on its merits. And I didn't want action taken that would be in any way construed otherwise.
My understanding was that the Bureau was going to be involved in ensuring that the case was being properly handled. I thought that was a good idea.

44

Q Did you ask Mr. Raphaelson to determine or have someone determine what the referral said about the Clintons?
A I don't recall that. I know that the U.S. Attorney said that they were witnesses and I think, at some later point, someone came into my office with a copy of the referral and said that that was a leap of faith, or sort of a charitable kind of designation of them, that there was obviously some investigation that would have to be done to determine what their role really was.
Q Who was it that said that?
A I don't recall.
Q Was it Mr. Raphaelson?
A It could have been.
Q Is there anyone else with whom you had discussed it at that point that could have made that statement to you?
A Well, there are other people in the Department that could have made it.
Q I realize that. But bearing in mind that you've told us that you wanted to keep it

45

confidential and keep the list of people who were aware of it as small as possible, who, other than Mr. Raphaelson, at that time could have discussed the referral with you?

A It could have been Bob Mueller, but I don't recall discussing it with Mueller.

Q Anyone else?

MR. GICALE: I guess I would object to any speculation. If he remembers.

THE WITNESS: I just don't remember who it was.

MR. COLE: I'm just trying to identify the people who were aware of this matter that could possibly have spoken, but I think we've exhausted his recollection on that point.

BY MR. COLE:

Q At the time that that discussion occurred, did you have the referral?

A What do you mean, did I have it?

Q Had you seen a copy of it?c

MR. COHEN: I'm sorry, I apologize.

MR. COHEN: I'm sorry, I apologize.

46

MR. COLE: At the time at which someone, Mr. Barr can't recall who it was, said that the characterization of the Clintons as witnesses was charitable.

MR. COHEN: At that time, excuse me, the person who was holding the referral at that time?

MR. COLE: That was my question.

BY MR. COLE:

Q Do you know on what he or she based the conclusion that the characterization was charitable on?

A No.

Q So he didn't say anything further as to what led him or her to that conclusion?

A I remember someone pointing to various pages and taking me back in the referral and commenting about it. It was a very brief discussion. I believe that, at some point, Ira indicated to me, and I'm not sure of this discussion, but at some point Ira indicated to me that he thought there was a problem, or was concerned about some characterization, and may have wanted to call the

U.S. Attorney and discuss it with him. And I told him not to.

Q Do you recall when that occurred?

A No.

Q Do you recall whether it was before or after you saw the letter from Mr. Banks?

A No.

Q Mr. Barr, have you had any conversations with Mr. Raphaelson about this subject since you left the Department?

A Yes.

Q When did those discussions occur?

A It's been three years, I guess, on and off over the years, we would briefly discuss how we were very proud of the way we had handled the matter at the Department.

Q Have you spoken with Mr. Raphaelson about this matter since he provided testimony to the Special Committee on the subject?

A I did talk to him briefly, but not about the substance of the testimony.

He told me that he voiced -- I'm not sure

what the right word is -- displeasure over the notion of having to testify, and that he started off by raising a question or suggesting that the nature of the conversations he had with me were privileged. And the deposition ran off on that for awhile, although he never asserted the privilege. He was merely saying that they were in the nature of privileged conversations, but that I had told him I had no concern about that, and that he should testify in full.

But other than that, we didn't get into the substance of the testimony.

Q So that was a discussion obviously that you had with Mr. Raphaelson after he had appeared here to give testimony?

A Yes.

Q Did you have any discussions with him in the days or weeks prior to his appearance here about this matter?

A Days or weeks?

Q Not that you would necessarily know when he received notice, that he was being asked to appear

here, but that's the period I'm interested in obviously, the period in which he knew that he was going to appear as a witness.

A At some point, he asked me -- he called up and told me that he was being asked to testify, and asked me if I wanted to assert the privilege as to the conversations he had had with me.

And I said, no, we had had the same conversation prior to Mr. Starr's investigation. He asked me if I wanted to assert privilege, and I said no.

Q Going forward from the time that you testified you saw the letter from Mr. Banks, the U.S. Attorney in Arkansas, so going forward through 1992 and into 1993, were you aware of any further review of what I'll refer to as the 1992 criminal referral by the Department of Justice in Washington?

A At some point, I was aware that someone in the Criminal Division had been advised about the case.

Q Do you recall who it was that had been advised?

A No, I can't recall. But my recollection was that there were some career prosecutors down in the Criminal Division who were aware of the case.

Q Did you ever come to have any knowledge as to what conclusions the career prosecutors in the Department of Justice drew concerning the 1992 criminal referral?

A Just what I read in the newspapers.

Q So did you ever see an analysis of the referral prepared by a Mr. Mark McDougall in the Fraud Section, I believe?

A I don't recall seeing any such analysis.

Q Did you ever discuss the 1992 criminal referral with Mr. Keeney?

A I don't recall ever discussing it with Jack Keeney.

Q What was Mr. Keeney's position in the Department?

A I believe he was Deputy Attorney General.

Q And he was a career Department of Justice official, is that correct?

A Right.

51

Q I believe you testified, or if not, my understanding is that Mr. Raphaelson's position at the time we've been discussing was a political appointment, is that correct?
A He was appointed by the President.
Q And Mr. Mueller's position as head of the Criminal Division, was that a political appointment?
A He was appointed by the President.
Q So did you have any occasion to discuss this referral with any career prosecutors in the Department who were not political appointees?
A I don't recall discussing it with any career prosecutors in the Department. But as far as I was concerned, it was being handled by the FBI and the U.S. Attorney's Office and coordinated with the Criminal Division.
Q Do you have any knowledge as to whether an issue arose as to whether the U.S. Attorney's Office in Little Rock and Mr. Banks could appropriately handle this referral, or whether that office should recuse itself?
A Excuse me?

52

Q Do you have any knowledge of any discussion or consideration within the Department of Justice as to whether or not Mr. Banks and the other officials in the United States Attorney's Office in Little Rock should recuse themselves, or otherwise disqualify themselves from evaluating the 1992 criminal referral?
A When I originally thought about this matter, -- hold on just for a second.
(Pause.)
When I was thinking about this matter in connection with Mr. Starr's investigation, my recollection was that he had recused himself before I left. But after my interview with Mr. Starr, I believe that may have been wrong, and that he may have recused himself after I left.
Q Do you have any documents or notes that help you refresh your recollection on that point?
A Not that I've found.
Q Do you know where Ms. Holliday is now?
A No, I don't.
Q When you stated earlier that you were

53

proud of the way the Department of Justice handled this referral, was that a reference to the fact that it was kept secret and never made public?

A Largely. But also, I believe that we were able to get the case on the right track initially by having the right people looking at the case.

Q So that would be career prosecutors in the Department, like Mr. Keeney and others who reported to him?

A It would have been the FBI.

Q So if Mr. Keeney and Mr. Potts reviewed this referral and took action, that would be the appropriate course of action, in your view, and you would rely on their professional judgments?

A I'm not sure what you mean by no action. You said he took no action?

Q If Mr. Keeney and others at the Department of Justice, career officials, Mr. Potts and others in the Criminal Division at the FBI reviewed this matter and came to a conclusion as to how it should be handled, is that what you would expect to have taken place?

54

A Well, no.

Under me, first, my staff, although you refer to them as political appointees, I don't think there's ever been a Department of Justice that has had both bipartisan and non-political people at the top of the Department. Ira Raphaelson was a career prosecutor. Bob Mueller was a career prosecutor. George Terwiliger was a career prosecutor. Dan Levin was a career government employee and registered democrat. And most of the political people that I had around with me were not particularly political one way or the other.

And Ira Raphaelson was in charge of financial institution fraud, not because of politics. I don't even know what his politics are. It wouldn't surprise me if he was a democrat before he was appointed. He was there because he was an expert on financial institution fraud.

And both under the statute and in my administration, I would have looked to him to make the final cut on the case.

Q I understand, and please understand that I

55

wasn't intending at all to cast any aspersion on those gentlemen.

My only point was that, for a matter like this, that obviously had significant political overtones, I was assuming that you would want it to be reviewed by non-political appointees.

A Ultimately, I believe that political appointees they are appointed because they are ultimately the ones that are accountable under our system for making difficult decisions. I would not have career appointees make this decision finally. That's why I objected to, among other things, I objected to the thing being withheld from me in the first place. Those are decisions that I think had to be made by the Attorney General.

Q Do you have any reason to believe that you would have not accepted the analysis or recommendations of Mr. Keeney and others in consultation with the FBI and the other senior officials at the Justice Department?

A Based on public developments, I have reason to believe that.

56

Q What would that be?

A Obviously, there's been a lot of investigation about the exact role of the Clintons. That doesn't seem to be a matter, to me, that can be adequately reviewed between January and March.

Obviously, I wasn't present to have an exact discussion with the principals, but from what I read in the newspaper, the principal was saying to the field that they would support whatever decision the field made.

I'm not sure that the Criminal Division was ordered to make the call on the handling of the case if there was a thorough investigation on the case between January.

And Mr. Keeney, you know, you're characterizing Mr. Keeney as making the call, but I would like to see what was done. But if there was no thorough investigation done, that would not have been acceptable to me.

Congress passed the FIRREA specifically because the Democrats felt that people involved in S&L scams were getting treated lightly by the

57

Republican administration because they were prominent local officials, many of them Republicans.

So they didn't want people like Charles Keating getting a break. They wanted these things aggressively handled, and they didn't trust U.S. Attorneys because they felt that U.S. Attorneys were frequently susceptible to pressure from prominent local people.

So they wanted a centralized handling of this case. They originally proposed a separate provision in Washington to prosecute all cases.

I personally negotiated, in lieu of setting up a separate division, I personally negotiated setting up a special counsel that would perform a centralized role and ensure the cases were pursued vigorously, and that there were no breaks cut to any political or prominent local people.

That, in my view, if this had been a prominent republican governor, and electoral politics were not involved, Ira would have been all over the case.

I think this case, what I can see, was not

58

properly handled after I left.

MR. BEN-VENISTE: Mr. Barr, this is Richard Ben-Veniste.

THE WITNESS: Let me say, I take that back. I have no reason to say it's not properly handled. As I said earlier, I don't know how it was handled, but judging from the public developments, it seems that there was a lot of investigation.

BY MR. BEN-VENISTE:

Q Let me see if I can clarify what it is you're saying.

You aren't suggesting, are you, that you had reason to doubt Mr. Keeney's impartiality?

MR. GICALE: I believe the witness has testified that he doesn't know what Keeney did.

THE WITNESS: I don't know what role Mr. Keeney played.

BY MR. BEN-VENISTE:

Q You worked with Mr. Keeney closely, I take it, over the period of time you were in the Department?

A Yes. I have no reason to doubt is

59

impartiality. But in many situations, I would not want to put career employees in the position of making certain calls, being the final arbiters.

Q It seems to me, I'm somewhat taken aback by your position on this because it seems to be standing on its head the notion that the career prosecutors at the Department of Justice are the people least likely to reach a conclusion based on an analysis that includes some kind of political weighting of the matter.

A Excuse me? I don't understand.

Q Put another way, it seems to me that we have heard very much from others, during the course of this inquiry, that would suggest that the career people in the Department of Justice are those least likely to be charged with political considerations in the decisions made by the Department.

You don't accept that fact?

A You have too many negatives or whatever there. Could you just repeat that.

Q Maybe that's the problem with telephone depositions.

60

A Just one more time. I think I know what you're driving at.

Q I'm asking you whether it is not the case, Mr. Barr --

A That the career people are, what, the best-suited to make these calls?

Q Let me ask it again another way.

Is it not the case that there is a career cadre of experienced Justice Department executives and supervisors, who have served through both republican and democratic administrations over the decades?

A Absolutely.

Q Is it not the case that it is generally felt that those individuals are the least likely ones to make their decisions based on political pressures or insolence?

MR. GICALE: I'm going to object to that. I don't know how he can --

THE WITNESS: That's a broad generalization.

BY MR. BEN-VENISTE:

61

Q Yes, it is. And if you disagree with it, please tell me, because it's contrary to my understanding.
A I know of many instances where that's the case, and there may be other instances where it isn't.
Q Do you have any reason to believe that in the case of the criminal referral that was submitted in September 1992, just prior to the Presidential election of 1992, that the career persons in the Department of Justice who analyzed the referral and provided guidance to the United States Attorney's Office and the FBI were somehow acting in a manner that did not reflect total political impartiality?
A I don't know who prepared the analysis.
Q Well, Mr. Keeney was involved.
A I don't know what you mean.
Q Mr. McDowell was involved. Mr. Margolies was involved.
A I don't know who wrote the analysis.
MR. GICALE: Again, I would object to this. He's already said that his decision on it, he

62

would have to have some discussion and determine what the analysis involved, how extensive the analysis was and how Mr. Keeney and/or others might come to those conclusions. He's already indicated that he did not have the benefit of that, and I don't think -- it's speculation.
MR. BEN-VENISTE: I'm sorry, Mr. Gicale, but I'm responding to what I believe to be Mr. Barr's speculation that he had reason to believe that it wasn't handled properly.
THE WITNESS: Well, I have no reason to believe that Jack Keeney handled the matter in a partisan manner. But I have seen career people be reluctant to make decisions that affect their careers as well. I'm not suggesting that is the case with Mr. Keeney.
But when a new administration comes into office, and new bosses are put over them, you may see some people run for cover who don't want to make a tough decision, and try to push it off in another direction.
I'm not saying that happened here. But

63

I'm saying that I would not say that the word of a career lawyer in the Department is necessarily the final word on all matters.

BY MR. BEN-VENISTE:

Q You will accept, will you not, Mr. Barr, that the reference to the Clintons, whatever it was, was not as a subject of the criminal referral?

A I don't think the word "subject" was used.

Q They were subjects of the criminal referral, were they not?

A I don't know what you mean by that.

Q There's a distinction between a subject or target and a witness.

MR. GICALE: Are you asking the question if there were subjects?

MR. BEN-VENISTE: Yes.

MR. COHEN: Mr. Ben-Veniste, all you're saying, isn't it an indication that the criminal referral identified subjects and did not characterize the Clintons as subjects.

MR. BEN-VENISTE: Yes.

BY MR. BEN-VENISTE:

64

Q Do you so understand, Mr. Barr?

A My recollection is that the Clintons were designated as beneficiaries of the action taken.

Q What is your recollection of how they were beneficiaries of the action taken?

A I can't recount that.

Q Did someone tell you that, or did you discern that as a result of reading the document?

A I think someone told me that.

Q And that would have been?

A I don't know.

Q Mr. Raphaelson or Mr. Mueller?

A It could have been.

Q But they did not explain to you how the Clintons would have been identified as beneficiaries rather than witnesses?

A It was suggested to me that the U.S. Attorney's Office's consistent characterization of them as witnesses was probably a legal thing that a good U.S. Attorney and prosecutor would have made at this stage.

Q So if the Clintons were identified as

65

witnesses, you attributed that to the U.S. Attorney's Office making a leap of faith?

A I'm not talking about the referral, I'm talking about the position taken by the U.S. Attorney's Office.

Q With respect to the referral which is what the U.S. Attorney's Office was, after all, analyzing. Did you understand how the Clintons were characterized?

A In the referral?

Q Yes.

A I do not believe they were characterized as subjects.

Q How do you believe they were characterized?

A Beneficiaries. That's my recollection.

Q So that you took it to mean that the U.S. Attorney's Office had utilized or used or suggested the characterization of the Clintons as witnesses, and you believed on the basis of what you were told that that was a leap of faith?

MR. COHEN: What he was told, you mean?

66

MR. BEN-VENISTE: Yes.

THE WITNESS: For all I know, the RTC could have used the term "witnesses" as well.

BY MR. BEN-VENISTE:

Q How would that then be a leap of faith for the U.S. Attorney's Office to accept the characterization of the RTC?

A You will have to ask whoever used that term.

Q Right now, I'm asking you how to justify the question of leap of faith. If the RTC described them as witnesses, where does the leap of faith come in?

A Well, you can be a witness and you can also be a subject.

Q I don't know, and I must say that there is a distinction for a very good reason in characterizing individuals in referrals as one or the other.

Did you have reason to believe that somehow the Clintons participated in a check kiting on the basis of what you were told?

67

A I'm not sure what you mean.
Q You know what a check kiting is?
A Yes.
Q Did you have some reason to believe, on the basis of what you were told about this referral, that the Clintons participated in the check kiting?
A No. I had reason to believe that there was a criminal referral that required investigation, and from what I can tell, there was investigation.
As regards to the precise role of the Clintons one way or the other, I have no idea what role the Clintons actually played one way or the other.
Q How would it then be charitable to characterize them as witnesses if you had no idea about what their role was?
MR. GICALE: I believe he's testified that that's how it was characterized to him.
THE WITNESS: I'm sorry, I didn't hear that.
MR. BEN-VENISTE: There's an objection I think, noted.

68

MR. GICALE: I believe you testified that that's how it was characterized to you.
THE WITNESS: We talked through him. I'd like to hear what he has to say.
MR. GICALE: I believe, Mr. Barr, you testified that that's how it was characterized to you, correct?
THE WITNESS: Correct. I also said essentially, I can't remember the exact words.
BY MR. BEN-VENISTE:
Q So you didn't ask any questions further about what Mr. Raphaelson or Mr. Mueller or whoever it was who mentioned this to you actually meant by it being charitable?
A I don't recall the exact extent of the conversation, how much give and take there was, but my recollection is that the impression was, from the people who were talking to me, that some investigation would be required to determine the role of the Clintons.
Q The point that I'm trying to get to, are you now remembering that there was more than one

person in the meeting when this characterization of it being charitable was made?
A No.
Q Are you now remembering that it was more than one person who used the term "charitable?"
A No.
Q So in the meeting that you do recall, although you don't recall the identity of the person who used the term, you don't recall asking any questions about what the exact role of the Clintons was as far as the information which had been provided to the U.S. Attorney?
A I don't recall asking questions, but I believe I asked some questions.
Q What questions do you believe you asked?
A I don't recall.
Q Do you think you asked questions about the Clintons' role?
MR. GICALE: When you say, do you think, I think he's already testified he doesn't recall. To speculate as to whether, what he might have asked, I object to this. I don't see where this takes us any

place.
MR. BEN-VENISTE: If I recall Mr. Barr's answer, I thought it was he asked questions about the Clintons' role.
MR. COHEN: I think he said he asked questions.
BY MR. BEN-VENISTE:
Q So he thought he asked questions.
Now I'm asking whether you thought you asked questions about the Clintons' role.
A I think I did.
Q And what do you remember being told about the Clintons' role in this check kiting?
A I don't know what you're talking about check kiting.
Q You don't know what I'm talking about check kiting?
A I didn't say that there was a specific reference to check kiting.
Q You don't recall the basis of the referral was check kiting?
A No, I don't.

71

Q Do you recall whether you learned whether the Clintons had signed any of the checks that were the basis of the criminal referral?
A I don't remember the details. I remember that the view was that becuase of the office and other things discussed in the referral, that there was the view that you woudl have to look hard at the Clintons' role, that these were not people who, at face value, were innocent bystanders, but you'd have to examine what their role was.
Q Did you have the view that there was some requirement of immediacy in learning what the Clintons' role was, whether or not you remember them being identified as witnesses or otherwise?
A You'll have to repeat that.
Q Do you remember whether you had the view that it was a matter of some immediacy to determine what the Clintons' role exactly was? That it had to be done right away?
A No. Although, you know, it was immediate to me before I found out about the referral, to find out whether or not there was a referral, and if there

72

was, were they subjects of the referral.
Q Having learned that they weren't subjects of the referral, did you entertain the view that it was a matter of some immediacy that an investigation be launched to determine precisely what their role was?
A No.
Q You accepted the view stated by the FBI that in circumstances such as this, it is appropriate to await the result of the election and not take action one way or the other that might influence the election?
A You say that's the view of the FBI?
My view was that, in this case, I did not want the case officially accelerated or decelerated or publicly disclosed but handled in the normal course.
Q Do you have any idea of how many pending RTC criminal referrals there were backlogged at the various U.S. Attorney's Offices in the Department of Justice in October 1992?
A No.

Q Given the fact that you had paid some attention to this issue clearly, as Attorney General, did you have a view that there was a substantial backlog?
A I'm not sure what you mean by backlog.
Q Cases that were awaiting investigation.
A There were prioritization cases and that prioritization was done with the input of Mr. Raphaelson. The potential involvement of public officials was the factor used in giving it a higher priority, so there was definitely a queue of cases. I wouldn't refer to it as a backlog. We just had never prioritized them.
Q But there was a substantial amount of business to be done in investigating and prosecuting cases that had already been referred to the Department of Justice and/or the U.S. Attorney's Offices in the field?
A Is that a question?
Q Isn't that so?
A In some districts. Other districts did not have many S&L cases. Some had none. Some had

one.
Q In connection with the database that you asked Mr. Raphaelson to search, what is it that that database tells you?
A All I can tell you is my understanding was that we had a database, that my understanding was that it would show us where the cases were, how they were staffed, what their priority was, what the nature of the allegations were, things like that, the key people involved.
Q The key people involved, did you say?
A Yes.
Q And by key people involved, that would be the identity of the persons referenced in the referrals?
A I would assume many of them would be involved, yes.
Q What was the range of access to that database?
A I don't know.
Q It certainly wasn't just for you?
A I don't know.

75

Q Was it Department-wide?
A I don't know.
Q Do you know whether other agencies of the Government might have access to that database?
A I don't know.
Q Do you have reason to believe that if that referral had been entered into the database, that there would be some way of protecting the confidentiality of the naming of the Clintons?
A I don't know. However, I would have expected the United States Attorney, if they were concerned about that, to call me on such a case because it was a sensitive case.
Q I'm sorry, I lost the last part of that. Could you repeat that?
A I said I would have expected the United States Attorney, if they were concerned about confidentiality, and they didn't want to enter all the data in the database, or they didn't want to send any urgent report, I would have expected the United States Attorney to call me and say, Bill, I understand that a case has come in, and here's what

76

it's about, here's the history of it, here are the allegations that are made, here's the role of the Clintons, here's how I believe we ought to handle the sensitivities, and discuss it with me.

I think a U.S. Attorney should do that if they're not going to follow the normal rules.

Q But given the fact that it wasn't done in this case, the outcome in terms of their being no dissemination of information and no overt investigation of the allegations were in conformity with what you thought was appropriate.

MR. COHEN: You're just referring to the outcome remaining secret through the election?

MR. BEN-VENISTE: Correct.

THE WITNESS: As far as it's remaining secret through the election, I think that's right. Although --

BY MR. BEN-VENISTE:

Q There are two parts to the question.

And further to be no overt investigative steps taken. You also agree with that?

MR. COHEN: He already said that was his

77

direction.
MR. BEN-VENISTE: Okay.
THE WITNESS: That was my direction because I had no basis for directing anything otherwise. But I do think that important decisions that should have been made by the Attorney General were precluded by the conduct of the United States Attorney.
BY MR. BEN-VENISTE:
Q Essentially, the conclusions that you reached were identical to the de facto situation that existed?
A I don't know what you're talking about.
Q You reached the same conclusion that the people in Little Rock had reached, which was that it would not be appropriate to take any overt steps, correct?
MR. GICALE: I object.
THE WITNESS: I know of no basis for questioning that judgment. And I wasn't prepared to question it.
My view is that the situation where a

78

referral comes in, a candidate for the presidency, is that it requires sort of an unusual judgment to be made. I can conceive of the circumstance, and I don't think that exists here, although I didn't know, going into it, a circumstance might exist where a referral comes in, and there's very clear evidence or it wouldn't take much to recognize compelling evidence of criminality, let's say very specific and credible, and numerous credible allegations of some kind of crime, where the Attorney General might, as a result of his own judgment, say that he would take it on his own to make that public before the election.
Q But that certainly wasn't the case here?
A That wasn't the case here, and I could conceive of a situation -- well, that wasn't the case here. I didn't know it until I became aware of the referral.
Q Okay.
A And I think that's a judgment I have to make, not him.
Q But you did make that judgment?
A And he should allow me to make that

79

judgment.
MR. GICALE: He didn't make that judgment. Mr. Ben-Veniste asked if you made that judgment. You were not given the opportunity to make that judgment, correct?
MR. BEN-VENISTE: Of course he made that judgment.
THE WITNESS: I was not given the opportunity to make that judgment. But based on what I see today, --
MR. BEN-VENISTE: Hang on. You're saying you weren't given the opportunity to make the judgment when you learned of the criminal referral that it was appropriate to take no overt steps?
THE WITNESS: Excuse me?
BY MR. BEN-VENISTE:
Q Are you saying -- Mr. Gicale is confusing --
MR. GICALE: I'm not confusing anything here. That's not the question you asked him.
BY MR. BEN-VENISTE:
Q The question I asked was, did you not make

80

the determination that it was appropriate to take no overt steps?
A I made that determination based on the information I had, but I felt the information I had was probably not full.
Q What was lacking from the information you had?
A I would have liked to know more about what the U.S. Attorney's Office knew about the role of the Clintons.
Q Why didn't you ask them?
A Because he had already made his position obvious.
Q But if you wanted to know more information, weren't you in a position to ask the United States Attorney to provide it to you?
A Not without, I think, perhaps triggering the reaction on his part that would have been wrong, but still probably plagued that investigation going forward. I thought it best to let the investigation go forward as it was.
But I'm not suggesting that there was

anything in here that puts this into the first category. The second category, it seems to me, would be a case where you have, you don't have slam dunk evidence of criminality, but it is significant evidence that might make someone a subject that you might want to look at very hard and possibly target sort of a gray zone in there. And I think that's those sort of cases you may say that you don't even want those cases, you want those cases aboslutely handled just as another case would be handled of the same type but not involving a political election. If it involves public disclosure, so be it. You're not the one who's authorizing public disclosure, but you're letting the chips fall where they may by simply following the evidence and handling the case just like any other case.

Q Do you have some reason to believe that in consultation with the FBI and the career people at the Department of Justice, that analysis was not made with respect to this criminal referral?

A I don't know when it was made.

Q So the answer to my question was, you have

no such reason to believe?

MR. GICALE: I believe the answer was he didn't know.

THE WITNESS: I'm not the Attorney General anymore, nor the Independent Counsel, so I don't have information about the case.

But at the time I left, I did not have that information.

Q Okay.

A And then finally, I would say that there are cases where the role of the sensitive figure is such that you wouldn't think that they would really be ultimately tied up in a thing as subjects or targets, and you would want to assure that the case does not play a role in the election process by assuring that there are no public steps taken.

Based on what I knew, and I did not have full information, but based on what I knew, this would fall in that category. But I felt that the delay by the U.S. Attorney and also his posture really prevented me from really getting an understanding of the case, and making that decision.

I felt the Attorney General should be on that.

Q His posture?

A But I don't know what the outcome of this was going to be. And, as I said at the time, I did not have an opinion about the case because I didn't know about the case. I didn't understand the merits of the case.

Q Did you understand the U.S. Attorney to be taking the position that the FBI could do what it wanted, that he would not be the one to authorize an investigation that might result in negative publicity in the weeks before presidential elections?

A It's my understanding he wasn't being asked to do that. That was not my understanding.

Q Are you suggesting that he would get, that you might get more information from him than he had? Do you have some understanding of how he would obtain that information, other than taking investigative steps?

A He obviously had a view. I think he had a view of the case, and it may have been partially

based on his experience with the McDougall case. I think it would have also been proper for him to review the documents that the Government already had in its possession, which would have required no grand jury or no subpoenas.

And I also think discussing it with the Bureau, the RTC and others would have been appropriate steps for the U.S. Attorney to take.

Q Were you basing your assessment of Mr. Banks' actions on your understanding that he had not reviewed the documents?

A My understanding was there had been no review.

Q Were you basing your assessment of Mr. Banks' actions on the understanding that the FBI had not reviewed the documents?

A I thought there was some dispute about the FBI reviewing the documents. I'm not clear on that.

Q Did you have it in your mind that the FBI had not reviewed the documents?

A What time are you talking about?

Q Prior to the election.

A My understanding at the time the letter came in was that there had been no review of the documents.

Q By either the U.S. Attorney or the FBI?

A Yes. I think that was my understanding.

MR. BEN-VENISTE: I don't have anything further.

MR. GICALE: I have nothing further. Thank you very much.

Thank you, Mr. Barr.

Thank you, Mr. Cohen.

(Whereupon, at 6:55 p.m., Monday, November 13, 1995, the taking of the deposition ceased.)

WILLIAM P. BARR

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, David L. Hoffman, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

David L. Hoffman

Notary Public in and for the
District of Columbia

My Commission Expires 6/30/00

DEPOSITION OF CHARLES E. SHEPPERSON IN RE: S. RES. 120

MONDAY, NOVEMBER 13, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of CHARLES E. SHEPPERSON, called for examination pursuant to notice of deposition, at 4:40 p.m. in Room 640–A of the Hart Senate Office Building, before DAVID L. HOFFMAN, a Notary Public within and for the District of Columbia, when were present:

VIET D. DINH, ESQ.
Majority Associate Special Counsel
GLENN F. IVEY, ESQ.
Minority Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

CONTENTS

Witness	Examination
Charles E. Shepperson	
by Mr. Dinh	3
by Mr. Ivey	17
by Mr. Dinh	42
by Mr. Ivey	60
by Mr. Dinh	62

EXHIBITS

Charles E. Shepperson

Deposition Number	Identified
Exhibit CS–1	47, 7671

PROCEEDINGS

Whereupon,

CHARLES E. SHEPPERSON

was called as a witness and, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. DINH:

Q Mr. Shepperson, as you know, my name is Viet Dinh. I'm with the majority staff of the Senate Special Committee to Investigate Whitewater Development Corporation and related matters.

This deposition is conducted pursuant to Senate Resolution 120, and it's this resolution that created the Special Committee, to be administered by the Senate Banking Committee, to conduct an investigation into Whitewater Development Corporation, Madison Guaranty Savings and Loan Association, Capital Management Services, and related matters.

Section 3(e) of Resolution 120 authorizes investigation of and public hearings into the source of funding and the lending practices of Capital

Management Services, Incorporated, and its supervision and regulation by the Small Business Administration, including any alleged diversion of funds to Whitewater Development Corporation. This subject will be the focus of today's deposition.

I should tell you that this deposition is made in advance of public hearings that are currently being conducted. We have not decided whether you will be called as a witness at such hearings.

The stenographer will prepare a record of questions and answers. This deposition will be treated as committee confidential until the hearings. Then it may be made whole or part public.

Prior to the hearings, you will receive a letter from the Committee telling you that you may come to the Senate to review the transcript of your deposition and make note of any corrections in transcription on an errata sheet. This is for the limited purpose of review, and the information is not be disclosed for any other reason to the press or to the other witnesses.

If you are called to testify at public

5

hearings, you will be provided with a copy of your deposition transcript four days in advance of the testimony, again for the limited purpose of preparing yourself for the testimony at the public hearings. You may be represented by counsel. I see you do not have counsel, for the record.

Objections as to the form of the questions can be noted for the record. There are two grounds upon which counsel may object and give an instruction not to answer. That is upon privilege and scope, the latter being that the question exceeds the scope of the resolution. I should advise that the Committee Chairman will ultimately rule on any objections where the witness refuses to answer a question.

Can you please state your name, for the record, please?

A My name is Charles E. Shepperson.

Q And your office phone number, please.

A My office number is 202-205-6768.

6

Q Who do you work for currently?

A I work for the Small Business Administration.

Q What is your position?

A Currently, I'm the Deputy Associate Administrator for Small Business Development Companies.

Q What was your position in May of 1993?

A I was the Deputy Associate Administrator for Investment.

Q And in that position in 1993, did you come to know a person named Wayne Foren?

A Yes. He was my immediate supervisor.

Q What was his position at the time?

A He was the Associate Administrator for Investment.

Q Can you tell us, as the Deputy Associate Administrator for Investments, what was the general nature of your responsibilities?

A I served as his alter ego, principally in managing the day-to-day operations of the office,

7

consulting with him on policy issues, and generally worked together with Mr. Foren.

Q So I take it you worked very closely with him on a day-to-day basis?

A Yes.

Q Do you see him very often during the course of a day?

A At that time I did.

Q In May of 1993 is when I'm concerned with.

A Yes. Our offices adjoined each other.

Q And his door is open?

A Yes.

Q Your door is open?

A Yes.

Q Do you make a practice of coming into each other's offices and talking?

A Often.

Q And much of that conversation had to do with the work that either you were working on or Mr. Foren was working on at the time?

A That's correct.

Q And anything out of the ordinary that is

8

relevant to what you were working on, you would probably talk to each other about that?

A Yes.

Q I want to direct your attention to the date of May 5, 1993.

To the best of your recollection, do you know if Mr. Foren had a meeting or a conversation with Mr. Erskine Bowles on that day?

A If I could, I'll just take a rabbit trail for one minute and explain.

You called me about an hour ago. I've not had the opportunity to review my calendar, my notes. And anything I say is to the best of my recollection, after having been disassociated with the Small Business Investment Company -- excuse me, the Small Business Investment Program -- for more than two years.

As I recall, in the May 5-May 6, thereabouts, time frame was approximately the time when Mr. Bowles was about to be confirmed. And Mr. Foren told me on the day before Mr. Bowles was confirmed as the administrator that Mr. Bowles told

him that the Capital Management specialized small business investment company should be referred to the Office of the Inspector General before the close of business that day. I believe that was May 5. I really don't -- if May 6 was the day he was confirmed, then May 5 is when this took place.

Q If I tell you for the purposes of this deposition -- let's assume that May 6 is the day that he was confirmed, then that would be May 5?

A Yes, the day before.

Q The day before.

Now, let me just make everything clear and unpack that statement. Mr. Bowles told Mr. Foren that Capital Management Services Company should be referred to the SBA Inspector General's office before the close of the business day?

A As I recall, that was the statement that Mr. Foren gave to me.

Q Do you recall when Mr. Foren told you about Mr. Bowles's instructions?

A I'm sure it was the same day. I am sure it was -- it must have been a short time after he was

told that.

Q Now, to the best of your knowledge and recollection, do you know if such a referral was made on that day?

A I believe it was made that day. My recollection is that it was made that day. I don't have papers available.

Q Do you know if Mr. Foren indicated this fact to Mr. Bowles after he had made the referral to the SBA IG?

A I don't remember that. I remember him telling Wayne that we should make the referral. Whether we got back in touch with him, I don't remember.

MR. IVEY: Can we go off the record for a second?

(Discussion off the record.)

(The reporter read the record as requested.)

BY MR. DINH:

Q When was the next time you became aware of any other conversation between Mr. Bowles and Mr.

11

Foren with respect to Capital Management?
A I can't remember a specific date. I presume it was early in Mr. Bowles's tenure, and Mr. Foren told me that following a meeting with Mr. Bowles, that Mr. Bowles took him aside and said that he had had dinner with the chief of staff at the White House, and mentioned the Capital Management situation; and that his comment was that that situation should be handled the way those situations are normally taken care of.
Q "His comment" being the chief of staff's?
A Yes. This is second, third-hand. I can't tell you a date. I can't tell you a time.
Q You said it was early in Mr. Bowles's tenure. Do you know approximately how early in his tenure? Within a week of May 5 or May 6?
A I'd be speculating at best. I couldn't put a time.
Q Within a month?
A You know, I don't know. It was early. I'd really be stretching to try and put a time frame.
Q I wouldn't ask you to speculate.

12

When did you leave your position as Deputy Associate Administrator for Investment?
A November of 1993. I was detailed to another position.
Q And this is the same time that Mr. Foren was reassigned from his position as associate administrator?
A Mr. Foren was reassigned something like October 23. My mother fell shortly thereafter and was in the hospital, and I was away from the office. And when I came back, I was detailed into another position.
Q And in this new position, you have not -- you were not working with Mr. Foren in any position?
A No.
Q So it's safe to say that when you say early in Mr. Bowles's tenure, that this conversation that Mr. Foren related to you occurred before October 23, 1993, then?
A Oh, certainly.
Q Are you aware of any other contacts between Mr. Bowles and the White House?

13

A One.
Q When he was still with the Small Business Administration?
A Well, no. I mean, you know, I presume he reported, as the Administrator of the Small Business Administration, to the White House on a routine basis on many matters.
Are we specifically talking about relative to the Capital Management?
Q Right, that was my next question.
Specifically, do you have any knowledge of any contacts Mr. Bowles may have had with the White House while he was Administrator of the SBA with respect to Capital Management, Hale, or Madison or Whitewater?
A I don't have any first-hand information.
Q Do you have any other knowledge?
A I would assume -- I mean, I know that as the investigation progressed and things began to take place and we became aware of them, that we informed Mr. Bowles of what we were doing, or what seemed to be happening. I have no idea what he did with that

14

information.
Q But you did give him updates as to the progress of the case?
A Yes.
Q Was it you personally or Mr. Foren when you said "we?"
A I'd say normally it would be Mr. Foren. We would generate information and give it to Mr. Foren, and he would sign it and send it on up to Mr. Bowles as information that became known to us from the general counsel, from our office, from various elements.
Q Apart from the chief of staff in the White House's statement that this case should be handled as you would any other case, are you aware of any other communication from the White House to the SBA as to how the case should be handled?
A No.
Q Are you aware of any sentiment during the summer of 1993 that this case should not be referred to as a criminal case by the SBA?
A No, I'm not aware of that.

15

Q Do you know who Cecilia Seay is?
A Yes. Cecilia Seay?
Q Yes.
A She worked in our Office of Liquidation in the investment division.
Q Do you know in the period of, say, generally the summer of 1993 -- do you know if she had any involvement with the Capital Management case?
A I don't know. I don't believe she did, but I'm not sure. There were a couple of intermittent supervisors between her and I, so -- intervening supervisors -- so I'm not sure.
Q So you were three or four levels above her in the supervisory chain?
A Yes.
Q Who would these people be, from the bottom up?
A It was -- Thomas Morris was the branch chief, if you would. Ronald Sobolski was the director of the Office of Liquidation, both of whom would have been between she and I.
Q I just want to return back to the

16

conversation you had with Mr. Foren when he related to you the conversation Mr. Bowles had had with the chief of staff.

Again, I don't ask you to speculate. But when you said it was definitely before October 23, 1993, can you say whether it was during the summer of 1993 that he had this conversation with Mr. Foren?
A I can't tell you. I would like to, but I just can't remember when it was. Perhaps if I had looked back through my calendars or something, I could maybe find meetings -- but I can't put a time frame on it.
Q I don't ask you to speculate. I really do appreciate your coming on such short notice. Like I said, we only came to some relevant information over the weekend, and I appreciate the fact that you have not had a chance to review your documents and your personal files.

I would ask that you do so within this week, and if such studies come up with any more relevant information, that you would advise either me or Mr. Ivey of any such information you may have

after reviewing your files.
MR. DINH: I have no further questions.
MR. IVEY: I'd like to thank you as well for coming on such short notice. I think you've gotten an hour's notice or so.
THE WITNESS: But I still have people I have to get in touch with in Sacramento and Houston, because I don't know if we're going to be in business tomorrow.
MR. IVEY: I apologize for the inconvenience. Let me try to go through this as quickly as possible, so we can wrap up.

EXAMINATION

BY MR. IVEY:

Q You mentioned you were sort of an alter ego for Mr. Foren, and that you worked closely together.
A Yes.
Q For what period of time was that, in fact?
A The entire time I was there. I believe I started in January of 1991. It might have been 1990 or 1991. I don't remember which year, and I was his

deputy for the entire period.
Q So, two and a half years?
A Say two years, just for the sake of round numbers.
Q Did you ever see each other socially?
A Yes.
Q Frequently?
A Once a week.
Q And after he left the SBA, did you continue to see each other socially?
A Yes.
Q Still about once a week or so?
A Not so often after he retired.
Q Have you seen him in the last two or three weeks?
A Yes.
Q On social occasions?
A Yes. As a matter of fact, I saw him in church yesterday.
Q You two don't live too far apart from each other?
A Opposite ends of the county. He lives in

19

Burke. I live in the suburbs of Alexandria.
Q Did you know when his deposition was taken before the Senate Special Committee?
A A couple of weeks ago. Mr. Dinh, I believe, called me to get his address and phone number so he could contact Mr. Foren at home. I had his home number.
MR. DINH: For the record, that was on advice of either the general counsel or the associate general counsel of the SBA that I called Mr. Foren.
BY MR. IVEY:
Q And after you gave Mr. Dinh Mr. Foren's phone number, did you talk to Mr. Foren shortly thereafter?
A I told him that I had given the Committee his address and phone number, and that they would be contacting him. I frankly had forgotten Mr. Dinh's name. I just knew that it was somebody from the Senate Whitewater Committee.
Q Did he ask you why the Committee was contacting him?
A I don't remember. I didn't know. If he

20

asked me, I did not know.
Q And after Mr. Foren gave his deposition, did you talk with him about his deposition?
A No. I didn't talk about his deposition with him, other than yes, he gave his deposition and he explained the whole situation with Whitewater that I presume covered the whole realm of the time that we were involved with Whitewater. But I don't know what he told them or what he told you specifically.
Q But he told you that he sort of testified about a range of issues relevant to Whitewater?
A Well, he told me he testified before the Senate Whitewater Committee on Capital Management. I presume that that's a range of all kinds of things that went on.
Q But he didn't give any specifics?
A No.
Q Like he didn't say we talked about David Hale?
A Well, if you talk about Whitewater, if you talk about Capital Management, you talk about David Hale. He was Capital Management.

21

Q The conversation that you had with him, was that all you discussed? Did you discuss any particulars about his testimony?
A He contacted me following whenever you guys contacted him. He talked to me in church, I presume the following Sunday.
Q Do you have a sense of what date you were talking about?
A It was two or three weeks ago or thereabouts.
Q Two or three weeks ago.
MR. IVEY: Can we go off the record for a second?
(Discussion off the record.)
BY MR. IVEY:
Q Just to recap for the two or three weeks ago --
A I believe it was the Sunday after he made his deposition two or three weeks ago, and he was asking me about what did I recall to be the sequence of events relative to our turning over Capital Management to the Office of the Inspector General.

22

Q Did he tell you what he recalled the sequence of events to be?
A We just talked about it, what happened. And it was, "Well, I remember that you told me that Erskine told you to turn it over that day. Then you had subsequently told me that Erskine had shared with you, and discussed it with clarity."
He asked me what the name of the lady was who used to be Mr. Bowles's confidential assistant. And I remembered her name. As I recall, Pam Madaris I believe is her name. That's generally -- we talked about what happened and how it happened.
Q Now, the narrative you went through about the sequence of events that you've just described, was that what Mr. Foren said to you, or what you said to Mr. Foren?
A That's what I said to him.
Q Did he ever tell you what he thought the sequence of events was?
A No. It was, "Yeah, that's the way I remember it." We did not specifically talk about exactly how it was. It was, "Yeah, that's the way I

23

remember it."
Q Did he tell you why he was wondering who Mr. Bowles's assistant was?
A No. He said, "What was that girl's name? That was a young woman who sat outside of his office -- Pam. What was Pam's last name, what was Pam's name?" And I told him what Pam's name was.
Q Did he ask you if this briefing took place, or any of these conversations took place, with Mr. Bowles over the phone or in person?
A Not that I recall. My recollection is that I mentioned this to Mr. Foren when we talked, when Mr. Bowles was first -- I don't know whether the right word is "nominated," or whatever the right term is -- he made the decision to not come into the building. And I had said to Wayne that it was my recollection that he was never in the building before he was confirmed.
On two occasions, Mr. Foren and I went over to the Old Executive Office Building and briefed Mr. Bowles on the SBIC program, along with our Congressional Assistant Administrator for

24

Congressional Liaison, anyway, and someone else. And we had meetings with them, I believe it was twice, because we couldn't get done the first time, and he was interested in this program.
Q Did Mr. Foren recall that Mr. Bowles hadn't come into the building until he was confirmed?
A Yes.
Q Did he then ask you whether this May 5 conversation took place before or after your confirmation? Did you discuss that?
A No. I said that it was before.
Q With respect to the conversation about Mr. McLarty, was there a discussion about whether that was before or after the confirmation?
A I don't recollect us discussing whether it was before or after. I think it was after, because it seems to me that Mr. Foren's comment was that he pulled me aside after a meeting and told me this. And that couldn't have happened unless it was afterward, because I don't recall Mr. Bowles coming to the building before he was confirmed.
Q Let me represent to you -- I know we

25

represented earlier to you that Bowles was confirmed on May 6. Actually, his confirmation hearing was on the 6th. He was actually confirmed on May 7.

Do you recall that sequence in that way?

A I don't remember the date, okay? If it was the 6th, that's fine. If it was the 7th, that's fine. I don't remember the exact date.

Q So if it's the 6th or the 7th, or whatever, this would refer to the initial meeting where the referral was discussed?

A Yes.

Q Let me phrase the question this way.

If the testimony was given, or someone said that the meeting took place on May 6, which is before Mr. Bowles's confirmation --

A Which meeting?

Q Let me finish the question.

-- in which Mr. Bowles pulled Mr. Foren aside and told him that he'd had dinner with McLarty the night before, or a conversation with McLarty the night before; would that square --

(Discussion off the record.)

26

(Whereupon, at 5:15 p.m., the taking of the deposition was recessed, to reconvene at 7:05 p.m., this same day.)

BY MR. IVEY:

Q I'm sorry. We had a break there, and I want to go back and make sure that we're on the same page.

You testified earlier that somewhere in this May 5 to May 6, 7 time frame was roughly the time Mr. Bowles was confirmed. Is that correct?

A That's correct.

Q And that during this time frame, or somewhere in that area, there was a briefing by Mr. Foren to Mr. Bowles.

A I never said there was a briefing.

Q I'm sorry. You say it in your words.

A Obviously, there was information that was provided to Mr. Bowles on Capital Management. And prior to his confirmation, he told Mr. Foren -- Mr. Foren told me he told him -- that we should refer Capital Management to the SBA Inspector General by close of business that day. And that day was prior

27

to his hearing and confirmation.
Q So you weren't present for that conversation between Bowles and Foren?
A No, I wasn't.
Q Did you ever see any documents or memoranda that were generated for that discussion or immediately subsequent to that discussion?
A Well, I imagine that I saw a fact sheet that would have described the situation with Capital Management. I don't have that fact sheet, nor can I tell you exactly what was on it. But I'm sure I've seen something like that.
Q You don't have a distinct recollection of it?
A No.
Q You testified that you had attended some briefings at the Old Executive Office Building for Mr. Bowles. Do you recall the time frame for those briefings?
A They were a matter of weeks before his confirmation. Each one of the program areas were called over to brief the administrator-designate on

28

their respective programs.
Q So this would not have been the week of his confirmation?
A I don't believe so. I believe there was more time than that that transpired.
Q And do you recall with respect to either at or about the time of the confirmation if that was done in person or on the phone?
A The meeting between Mr. Foren and Mr. Bowles?
Q Yes.
A I cannot -- I don't believe it was in person. I believe it must have been something over the phone.
I know, I do recall that Wayne told me that he spoke to Mr. Bowles on the phone, and we were supposed to take action on Capital Management. That was a phone conversation, and as I mentioned earlier, my recollection is that Mr. Bowles never came to the office building that we were in prior to his confirmation. And I only remember Mr. Foren going over on those two occasions when I was with him to

29

brief Mr. Bowles.
Q In March 1993, were you present for a meeting with Mr. Foren and Mr. Hale?
A Yes.
Q Do you recall Mr. Hale talking about his relationship with Bill Clinton?
A Yes.
Q What did he say?
A The word, the one thing I remember from that discussion was he kept saying, "We don't do business like that in Arkansas." Mr. Hale -- I can't remember the exact words or particulars, but Mr. Hale was mentioning that there were individuals and businesses that were interested in providing capital to his investment company merely because they wanted to help Arkansas. And Mr. Hale was inferring that there was -- he had some degree of influence with the former governor.

As I recall, he told us that Mr. Clinton was very aware of the program, and thought it was valuable.
Q Did he say anything else about Mr. Clinton

30

that you recall?
A He made an inference to assisting the President, or the President-elect, in his campaign efforts. Presumably -- I believe it was when he was running for governor. No one asked, and I've often thought about this afterwards: I did not ask, nor did anyone else present at the meeting ask, whether this was personal or whether this was through Capital Management. The assumption was that it was a personal rather than a Capital Management activity.
Q When you say "this," you mean?
A Whatever the assistance was that he provided. I often rethought that, and thought that I should have asked more.
Q And Hale didn't volunteer the information?
A No. I don't know what the assistance was, merely that he had helped him in his campaigns for governor.
Q Did he say anything else about his relationship with Clinton that you can recall?
A You know, the guy was a namedropper. You know, he was trying to ingratiate himself with the

31

people he knew, and Little Rock is a little town, you know, kind of philosophy and attitude. That's what he was going on at some length about.

Q I know you're saying he's a namedropper, so I assume he dropped a number of other names. But we don't need to go into those at this point.

I do want to know, though, if you've exhausted your recollection about things Hale said about Bill Clinton at that meeting.

A The things I remember him saying had to do with helping with his prior elections. And, you know, the idea of having influence with the President, and he could call the President or whatever. He could call the White House. He knows all these people.

Q Did you take that as any type of threat?

A I took it as blustering.

Q I think the record reflects that his comments didn't derail SBA's investigation of CMS in any way.

A No, not at all.

(Pause.)

32

Q Now, on May 5, in addition to the conversation between Bowles and Foren, the Inspector General of the SBA also received a referral with respect to CMS.

A We said that was a referral. I believe it was the same day.

Q Do you know if Mr. Hale was notified of the fact that CMS had been referred to the Inspector General on that day?

A I don't remember if he was notified. I don't remember.

Q Do you not remember if he was notified at all, or just on that day?

A I'm sure he was notified. I don't --

Q Why?

A I just can't imagine him not being notified. I don't remember the paper, but this wasn't something that was done in a vacuum. We referred it for investigation. The issue that was at hand -- I mean, we told him we needed answers to these questions, and if he wasn't forthright in providing us answers to the questions, we were going

33

to have to refer it.
I would presume that after we did it, we would have told him. But I can't tell you when and where.
Q Was it typical for targets of potential investigations by the Inspector General to be informed by SBA that their case had been referred to the Inspector General's office?
A Well, that's the only one that I've been involved in. So I don't know whether "typical" is the right word.
Q Were you involved in any way with the placing of CMS in receivership?
(Pause.)
A I normally chaired the meeting that resulted in a company being placed in receivership.
Q Because the people in liquidation reported to you?
A Yes. And normally, when we would place a company in receivership, we would have representatives from the operations side and representatives from the liquidation side, and Mark

34

Stevens or someone from the Office of General Counsel, and myself. And we would go through.
I can't remember the event of placing them -- "them" being Capital Management -- in receivership. But I expected that I was there. I can't remember exactly when it was. I think it was, say, in June, July. I don't remember when. It was sometime during the summer, and I was involved in all of those decisions at that time.
So I expect I was.
Q Even if you don't recall the specific meeting, you do recall that CMS was placed in receivership?
A Yes.
Q And this would have been between the date of the referral to the Inspector General in early May, and the time when Mr. Hale was indicted in September?
A I think it was. The indictment would not necessarily have been a factor. That's what I meant. The indictment was irrelevant to whether or not the company was put in receivership. But I think it was

35

some time during the summer.
Q Also at some point during that period, between the confirmation and Mr. Foren being reassigned, he mentioned to you that Mr. Bowles had told him about a meeting that Bowles had with McLarty.
A Yes.
Q Did he give you any details about the conversation he had with him?
A As I recollect, his reference to this was that it was sort of at the close of another meeting that just kind of conveyed that he had spoken to the chief of staff about this, and the chief of staff had said to do what you normally do -- whatever is normal in these circumstances, something like that.
Q Just to be clear, you weren't present during that?
A I was not present.
Q Did he tell you the way Bowles described the meeting with McLarty? Did he give details about that meeting?
A I mean, just in general, the terms that I

36

just did. That would have been about the extent of the details. I can't remember more detail.
Q Do you recall him saying where they had this conversation?
A My -- as I recall it, he said they had dinner. Somehow it was in conjunction with dinner. But I don't know when or who was present, or whatever.
Q In any event, it wasn't your sense that this was a meeting, like at the White House or something?
A No. That wasn't my sense. Similarly, my sense was -- and although this was never said to me, it was something that was not the subject of whatever they were doing, you know. It was something that came up in a conversation. And it's, "Oh, by the way."
Q Sort of an aside?
A Sort of a side issue that would have come up. At least, that was the sense that I had.
Q Now, before this Bowles-McLarty meeting took place, or this conversation between Bowles and

McLarty was discussed with you, do you know if Mr. Foren had told Mr. Bowles about Mr. Hale's comments about his friendship with Mr. Clinton?

MR. IVEY: Off the record.

(Discussion off the record.)

MR. IVEY: Back on the record.

(The reporter read the record as requested.)

THE WITNESS: I believe that pertaining to Mr. Hale's comments in our March meeting, I think it took place in March. If I'm correct, in our March meeting, I believe that Mr. Foren generally -- not specifically, but generally -- appraised Mr. Bowles of the reported relationship between Hale and the former governor.

But again, that's my sense. That's my recollection. I was not present when he did.

BY MR. IVEY:

Q Why is this your sense?

A As I think back to our discussions that we had during that time when we were talking about Capital Management and talking about David Hale, we

always tried to be careful, because we were concerned he might just as well run over to the White House and call somebody, or -- by "careful," I'm not saying we did anything that we wouldn't otherwise have done. But we tried to make everybody aware of this guy's purported contacts, so that nobody got blindsided.

I do recollect that he was -- "he" being David Hale -- was in frequent contact with his Senator.

Q Bumpers?

A Yes.

Q Bumpers at the time was the chairman of the Small Business Committee?

A Yes. But Mr. Bumpers didn't exert any pressure. It was "So-and-so called." Come back through the staff and so-and-so called. "Are you responding to his concerns? Yes, we're responding to his concerns." And there wasn't any arm-twisting or anything like that. We're just sensitive to the way this guy operated.

Q All right.

So there was concern about him going to

39

the White House. Did there come a time when you learned that David Hale actually had gone to the White House?

A As I recall, after things were well down the road, I had heard that he had tried and tried to go to the White House, but they wouldn't even talk to him, and couldn't gain an audience.

Q Do you know where you heard that from?

A No.

Q Do you recall media accounts about Mr. Hale's public statements during this period?

A I recall media accounts about his statements. I can't recall when. Obviously, as things grew to fruition, I would read the highlights of what Mr. Hale was up to, but I can't remember what I heard when, and what his accusations were. It kind of all runs together.

Q Do you remember any of the specifics of his allegations? Were there any that concerned you specifically?

A Concerned me? No.

(Pause.)

40

Q Other than the briefings at the OEOB, were you ever present for any briefings of Mr. Bowles?

A Yes.

Q At what point?

A I'm trying to remember. I can remember sitting in his office, and the general counsel -- I imagine it was when we were talking about the regulatory changes we were making in the program, and how we were going to implement this new legislation that was creating the venture capital SBIC.

I can remember on several occasions kind of sitting around the table in his office and going through some of these issues.

Q So these were policy and legislative types of things?

A Yes, policy -- how to implement the legislation, different things like that. I can remember those kinds of meetings.

Q Did you see Mr. Foren testify in the House back last summer?

A I was at work. I heard some of it on the radio. But as I recall, it went on seemingly

41

forever, and when I got home, I caught the tail end of it. But that's all I saw.

Q Would it be fair to say that you don't know all of what he said?

A No, I don't. He seemed to be there, it seemed like eight or ten hours or something. But he didn't say much. Whoever -- I can't even remember; there were some RTC people, and I don't know if it was GAO or some other people who were on the panel with him, and they certainly had the brunt of the discussions.

Q Did he talk to you after?

A Oh, sure.

Q What did he say? Did he talk about any of the specifics or the substance of what he said?

A The one thing we sort of joked about was, I guess it was Representative Frank decided he wanted to ask him a question. And Wayne apparently left the table, and apparently Mr. Foren had left to go find his voice. He completely lost his voice the day before the hearing, and that joke that Barney Frank made is the one thing I remember we joked about.

42

MR. IVEY: I have no further questions at this time.

MR. DINH: I just have a couple of more questions in light of your testimony.

FURTHER EXAMINATION

BY MR. DINH:

Q So he talked with you after his House testimony?

A "He" being Wayne?

Q "He" being Wayne; I'm sorry.

A Yes.

Q Mr. Foren?

A Yes. We talked.

Q You see each other at church?

A Yes.

Q And as a matter of fact, you saw Mr. Foren yesterday at church.

A Yes.

Q And you said that you had a friendly social relationship with him, both during the time you worked together -- and that carried forward to this day?

43

A Yes.
Q And of course, you have worked together on CMS issues?
A Yes.
Q Was it out of the ordinary that Mr. Foren talked to you about his House testimony?
A No.
Q Likewise, was it out of the ordinary, given your relationship with Mr. Foren, that he had talked to you about the testimony, albeit generally, that he had been deposed by the Senate?
A No. We are good friends.
Q In that conversation when he and you talked about the fact that Mr. Foren had testified in a deposition here at the Senate Whitewater Committee -- during that conversation, you were the one who told him what you recollect as far as what the events were?
A He asked me. He obviously did not want to talk. Okay, I would like to have talked to him about what he said, but he obviously didn't want to talk.
But it was, "What's your recollection?

44

How do you remember this taking place?" And I told him what I remembered and how I remembered it taking place.
Q When you say he did not want to talk, did you get a sense as to why he did not want to talk about it?
A No. I mean, we didn't get into any particulars.
Q But other than confirming your recollection as far as the events surrounding the handling of the Capital Management, did he tell you what his independent, specific recollections were?
A No. Wayne has far more detailed recollection of this, because during the time this was all going on -- for some reason, he's a pack rat. And he just kept a file on all the documents. And I didn't have, you know, I don't have hardly any documents. I don't know that I have any documents relative to Capital Management and the things that went on.
About the only thing I have are things like calendars and those kinds of personal things. I

45

don't have detailed documents.
Q But you said he had a far more detailed recollection. I just want to be clear.
At this meeting, after he was deposed by the Senate, when you met at church the following Sunday, did he at any point provide you information with respect to the detailed recollection that you suppose he had?
A No. We talked about this issue of the timing around May 5. We talked about that.
Q And you said that he says, "That's about the gist of what I would remember?"
A Yes.
Q But he did not provide the specifics of this recollection?
A He had a letter. He talked to me at church after this, okay, like the week after or something like that. And then we saw each other at church again. Maybe it was that we talked in the morning, and then this was Sunday night that we saw each other again. And he was preparing a letter that talked about this, and he showed me this letter. I

46

don't have a copy of it. I don't know who he's entrusted it to. I suppose it was to one of you two.
That's all I can recall.
Q Did he ask you to make any changes to this letter?
A I think this is when we talked about Pam Madaris. I think I mentioned Pam Madaris was the name of the person who was Erskine's confidential assistant. I think that was it.
Q Do you think she has information that may shed light on this issue?
A Pam?
Q Yes.
A I don't know. I only met her a few times. She was a conduit that everything went through, as was the other person that everything sort of went through to go to Erskine was the Congressional-legislative liaison person, Chris Wadine; that was her name. They were kind of -- I don't think Pam Madaris was on the scene until after he was confirmed. I believe that Pam came after his confirmation.

47

But I don't know.
Q Going back now to the specifics of the May 5 through May 7 era that we have focused upon, you mentioned earlier that you may have seen a fact sheet that Mr. Foren and you prepared for Mr. Bowles.
I am going to show you an exhibit that is, unfortunately, not Bates-stamped, but that I will asked be entered as Exhibit CS number 1. The title of it is "Undated: Capital Management Services, Inc., Little Rock, Arkansas, License Number 06/06-5207," and ask you to study that.
(Exhibit CS-1 identified.)
(Document handed to witness.)
BY MR. DINH:
Q Have you seen this exhibit before?
A This is the form of a fact sheet that we would normally fill out.
Q But have you seen this specific fact sheet before?
A I don't remember.
Q But it's consistent with a fact sheet that you would use to brief?

48

A That's correct. It's the same form that we would have used to brief anybody on any one of several companies that were in receivership or having problems one way or another.
Q With respect to the specific days involved -- and I know you don't remember the precise date, nor do we have any precise dates, but I just want to make sure we're on the same page as far as what exactly the series or sequence of events are -- before Mr. Bowles was confirmed, Mr. Foren told you that Mr. Bowles instructed that Capital Management be referred to the SBA IG?
A That's correct.
Q After he was confirmed, Mr. Foren told you that Mr. Bowles had pulled him aside after a meeting and told him that he had talked to Mac McLarty at the White House, and Mr. McLarty's instruction was to handle it as you would any other case?
A Correct.
Q Or something to that effect.
Now, Mr. Bowles, you testified earlier, was not in the SBA building as a general rule before

49

he was confirmed?
A That's correct.
Q And he, of course, was in the SBA building after he was confirmed?
A Obviously.
Q And to the best of your knowledge, the meeting after which Mr. Bowles pulled Mr. Foren aside to tell him this fact about Mr. McLarty was at the SBA building?
A Yes.
Q So is it a fair assumption to say that this meeting after which Mr. Bowles told Mr. Foren about Mr. McLarty's conversation with him previously occurred after Mr. Bowles's confirmation?
A Yes.
Q And sometime thereafter, but during that summer, Mr. Foren relayed this information to you?
A That's correct.
Q You had testified earlier that you knew that Mr. Hale had frequent contact with his Senator.
A I say frequent. He had contacts with.
Q He had contacts with. How did you come

50

to this knowledge that he had frequent contacts with his Senator?
A Well, I recall him telling us that he called Dale Bumpers at different times. And I also recall -- and I can't tell you, again, the time or place -- but I recall during one of the meetings when we would go up and brief John Ball, who was the then-head, chief of staff of the Small Business, on where we stood on either the specialized SBIC buyback or the regulations that we were trying to develop to get published implementing the new legislation, that Wayne told them that there were some serious problems regarding Mr. Hale, and that they would be wise to distance themselves from Mr. Hale.
Q Did Mr. Ball at that time acknowledge that they in fact had been in contact with Mr. Hale?
A I think they indicated that Mr. Hale had called them.
Q So this was not just an idle boast that Hale had, that I have contacts with Bumpers, but in fact --
A As I recall, somebody at the meeting --

51

maybe it was John Ball, maybe it was Patty Force, maybe it was somebody else who was there -- again, this idea that Little Rock is not a big town, and that he would run into Judge Hale when he was in town at the barbershop or wherever; they would run into each other.

Q Based on that, that was your basis for knowledge that Hale indeed had access to at least the staff at Senator Bumpers' office?

A Yes.

Q Going back to specifically the March 1993 meeting in which you testified earlier he had made some comments regarding then-President Clinton, or former Governor Clinton, did he also mention then-sitting Governor Jim Guy Tucker?

A Not that I recall. I recall Jim Guy Tucker becoming involved once this thing started to become involved and we got into the receivership and actually had the records. We could see Jim Guy Tucker, as I recall; he was involved once they started to delve into the receivership documents.

Q By "involved," did he propose a meeting

52

with you?

A No, no, no. I meant in the history of Capital Management. He had been involved with Capital Management during its time as an active specialized small business investment company.

Q So when you said he became involved, you meant that you became aware of his involvement in the case?

A Correct.

Q With respect to the comments about President Clinton specifically, you had the impression that it was one of the gubernatorial campaigns that Mr. Hale was referring to when he said that he had "helped out" President Clinton?

A Yes, I did.

Q Do you recall the approximate time frame of the gubernatorial campaign?

A No. My recollection is that it was one of the relatively early gubernatorial campaigns, but I couldn't hazard a guess which one at this time.

Q It was one of the earlier ones? What gave you that impression?

53

A You know, I don't know. I don't remember. Maybe it was when he was just starting or something like that. I don't remember the comment that Hale made that led to that conclusion.

Q And based on this information, you testified earlier that you were -- "careful," I think was your word -- in handling this case, knowing that there was potential that he might well run over to the White House.

A Remember, this guy was a sitting judge in Arkansas. I mean, you know, when we talked to him, we called him Judge Hale, you know. He was obviously a person who was well-known in Arkansas.

Q And this caution on your part -- and by "caution" I just mean simply as a procedural matter, not in any substantive handling of the case -- but this caution developed after the March 1993 meeting?

A No. It was before that.

Q Simply because of his position as a judge in Arkansas?

A Yes, always had been very sensitive of him because of his position in Arkansas.

54

Q But after his revelations or allegations regarding specific contacts with and ties to President Clinton, then your caution was more directed toward the White House?

A Not really. It was just an ounce of prevention is worth a pound of cure. You know, be careful when you're dealing with a snake, lest you get struck.

I didn't mean to degrade his good name by referring to him as a snake.

(Laughter.)

THE WITNESS: But he was by definition a person to be careful with.

BY MR. DINH:

Q And based on this estimation of him is what you presumed Mr. Foren told Mr. Bowles regarding Mr. Hale's alleged ties to Mr. Clinton?

A I presume so.

Q Because that would be a relevant part of the handling of this case?

A Yes. You need to be sensitive to that.

Q Just as one needs to be sensitive of the

55

facts in the summary of the case?
A That's right.
Q This is one of those areas that impinge upon the case?
A Correct.
Q I know you testified earlier that you should have asked the question whether Mr. Hale assisted the President-elect in campaign efforts in a personal or a Capital Management Services-related posture.
Have you come to any subsequent knowledge as to what posture he assisted?
A No, only the allegations that I've read in the newspaper after he was indicted and was trying to strike a deal with the special counsel, things I read in the newspaper. I've not talked to him at all.
Q Let me just make absolutely clear.
Prior to my call to you this morning, did you have any knowledge that you were going to be deposed by this Committee?
A None.
Q Either prior to or after my call this

56

morning, prior to coming to this deposition, did you have any discussion as to the specifics of your testimony that you would give here at this deposition?
A I notified my supervisor that I had been called, and notified our Congressional liaison office that I had been called to come up and give deposition, and notified the Office of General Counsel. That was the hardest people to notify, and in fact, it was from them -- for some reason there was a mixup in getting the fax that you sent me. And it was Mark Stevens who gave me the fax that you had sent to me and cc'd to him.
Then, after I came back to my office, just as I called you back, I found the fax in my office.
Q Did any of these people tell you what to say or ask you about your testimony here today?
A No.
Q Did anybody else other than these people tell you what to say, or talk to you about your testimony?
A No.

Q Did you have any discussions with Mr. Foren about the testimony here today?
A No. He doesn't know I'm here, been here, or whatever.
Q Nor does he know any specifics or substance of your testimony here before this Committee?
A No. I don't know how he could.
MR. IVEY: He's got a bug under the table.
(Laughter.)
THE WITNESS: Unless you guys told him.
(Pause.)
BY MR. DINH:
Q Do you remember where in the Old Executive Office Building you briefed Mr. Bowles?
A It was a tiny -- all I remember, it was a tiny little office.
Q You don't remember whose office it was?
A No.
Q It was not in a conference room?
A I remember it being in this little office. It was about twice the size of this table. There was

room for a chair, a desk and three or four chairs, and they were all filled, and there was no room -- or just a little room. I don't remember whose it was.
Q However big it was, I'm sure it's larger than our room upstairs or downstairs.
A It was very small.
Q Do you remember if anyone else at the White House was there?
A No. The only people that were there were Chris Wadine, who was the transition team, I guess; and Erskine Bowles and Wayne and I, and Jan Wolfe, who was the Acting Deputy Associate Administrator for Finance, Investment and Procurement, who was also I believe in the first meeting. I don't think she was in the second one.
Q During this period, between May of 1993 until your reassignment in November 1993, did you have any discussions with Martin Teckler about Capital Management?
A Well, I'm sure we did, because I think it was during that time frame when they were referred to the IG for investigation. It was during that time

59

frame when we put them into receivership. I can't remember who.

I testified earlier I do not remember the particular receivership meeting when Capital Management went into receivership. Martin Teckler could have been there. Mark Stevens could have been there. One of Mark's staff attorneys could have been there. I don't remember.

Q I know I asked you this question generally before, but let me just focus this.

Do you remember any sentiment expressed by Mr. Teckler or a member of his staff about any sentiments that they may have had from the White House respecting the characterization of this case, or concerning the handling of this case?

A No, I can't remember that.

(Pause.)

Q Do you know who Arnold Hawkins is?

A No. Doesn't ring a bell. Arnold Hawkins? Uh-uh, no.

MR. DINH: I have nothing further.

MR. IVEY: Let me ask a couple of quick

60

follow-up questions about the letter that you mentioned Mr. Foren showed you.

FURTHER EXAMINATION

BY MR. IVEY:

Q Did you know what the purpose of the letter was?

A My understanding of the purpose of the letter was to clarify questions that he had in his mind about what transpired on or about the 5th of May.

Q Do you know what prompted him to write the letter?

A My presumption was the meeting he had with you guys, his testimony; the meeting he had with you guys.

Q Did you read the letter?

A Yeah.

Q And then did you discuss it with Mr. Foren after reading it?

A I remember after reading the letter saying that this person's name was Pam Madaris.

Q There was a blank there?

61

A There was a blank that was in there. I said I think her name was Pam Madaris.
Q Had you talked -- on trying to recall your testimony, had you talked the week before you saw the letter to --
A I'm not sure. I'm thinking that it might have been the same day; that I talked to him in the morning, and then talked to him again in the evening. You know, I would have seen him at 10:00 o'clock in the morning or 10:30 or 10:00 o'clock when we went to church, and then in the evening after we had talked. In the evening, as I recall, is when I saw that letter.
Q Did you two meet again, or did you come back again?
A At church in the evening, that's what I meant. We went to church at 9:45 and then at 6:00 o'clock at night. And I think he showed me the letter that same evening.
Q So you went to church twice that day?
A Yes.
Q Or did you stay the whole day?

62

A No, twice that day, which is the norm on Sunday.
Q So you went in the morning, left like noontime or something?
A Yes.
Q And then when you came back at 6:00, you saw him again and you looked at the letter?
A Yes. That's when I saw the letter, as I recall. I'm thinking it was the same day. It could have been a week intervening, but I tend to think it was the same day.
MR. IVEY: I have nothing further.
FURTHER EXAMINATION
BY MR. DINH:
Q I just have two more quick questions about that specific topic.
You said earlier that in the morning you had talked, and then actually the name of Pat Madaris came up specifically in that conversation with respect to who that person was who was the person that was the confidential secretary for Mr. Bowles?
A Yes.

Q And you said that this is the norm on Sundays: that you go to church twice, once in the morning and once in the evening?
A Right.
Q It was not an unscheduled or a scheduled visit, or something like that?
A Right.
Q That he made specifically for the purpose of showing you this letter?
A No.
Q As a matter of fact, in the letter, you offered the name of Pam Madaris again.
A I said, "This woman's name is Madaris; Pam Madaris."
Q Did it strike in your mind as odd that Mr. Foren may have showed you this letter in light of your conversation earlier about this subject, and about Ms. Madaris in particular?
A No.
MR. DINH: I have nothing further.
MR. IVEY: Thank you for your time.
(Whereupon, at 8:05 p.m., the taking of

the instant deposition ceased.)

CHARLES E. SHEPPERSON

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, David L. Hoffman, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

David L. Hoffman

Notary Public in and for the
District of Columbia

My Commission Expires 6/30/00

CAPITAL MANAGEMENT SERVICES, INC.
LITTLE ROCK, ARKANSAS
License No. 06/06-5207

SUMMARY:

- Non-cash assets were contributed to CMS as a capital contribution that were represented to be free and clear of liens and encumbrances. It is questionable as to whether this representation was correct. CMS attempted to obtain leverage from SBA based on this increase in capital.

- Licensee transferred certain assets to an associate in exchange for stock which was represented to be non-restricted stock listed on NASDAQ. The stock is restricted and not listed on NASDAQ. The value of this stock is questionable.

- We have attempted to obtain the source of the donated assets without success. Therefore, the matter has been referred to the Inspector General for investigation.

BACKGROUND:

- CMS is a Specialized SBIC that was licensed on 3/14/79 and it has $1.4 million in private capital and $3.4 million in SBA leverage.

- In June 1992, Licensee initiated two non-cash transactions with an associate (Central Arkansas Community Development Corporation) which were not consummated until September 1992:

  - It accepted a pool certificate backed by medical receivables valued at $11.5 million and National Building Supply (NBS) stock valued at $2.3 million as a contribution of non-cash assets which was represented as an increase in private capital.

  - Licensee received NBS stock valued at $2.5 million for certain assets held by the Licensee which were reported by the Licensee to be of comparable value.

- In October 1992, Licensee applied for $6 million of leverage in the form of preferred stock based on the capital increase consummated in September 1992.

- On December 8, 1992, Licensee:

  - Was reminded that, as a matter of policy, SBA does not leverage capital contributed in the form of non-cash assets until such assets are converted to cash.

- Was advised that an examination of the Licensee's operations would be needed before any leverage could be provided.

- Was advised that approval of disposition of assets to an associate would be conditioned on the Licensee converting the NBS stock into $2.5 million of cash within 120 days.

- Was advised that the $6 million leverage application was being returned.

o On December 9, 1992, SBA agreed to accept a $1.4 million leverage application based on the licensee's representation that:

  - the medical receivables were free and clear of liens and encumbrances and

  - the licensee would dispose of the NBS stock received in exchange for Licensee assets within 120 days.

o On March 11, 1993, the Examination report on the Licensee was issued. Among other things, the examiner was not able to determine the source of the donated assets. The examiner reported that there was a reluctance on the part of the Licensee's management to disclose any information concerning the source of the donated assets.

o On March 26, 1993, an examination letter was sent advising the Licensee of the results of the examination and stating that the leverage application would not be processed until the regulatory matters were resolved. The letter also provided the Licensee another opportunity to explain the source of the non-cash assets.

o On April 23, 1993, SBA received the Licensee's response to the Examination letter. Answers to questions concerning donated assets were not provided. Instead, the Licensee stated that they would reverse the transactions and that no explanation should be necessary.

o On May 5, 1993, the matter was referred to the Office of Inspector General for investigation with the expectation that the source of the contributed assets will be identified. Licensee was advised that they were not responsive to the examination letter and that the matter had been referred to the Inspector General.

DEPOSITION OF MARTIN D. TECKLER IN RE: S. RES. 120

FRIDAY, NOVEMBER 17, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of MARTIN D. TECKLER, called for examination pursuant to notice of deposition, at 10:00 a.m. in Room 534 of the Dirksen Senate Office Building, before PATRICIA A. ZUBER, a Notary Public within and for the District of Columbia, when were present:

LOUIS J. GICALE, ESQ.
Majority Deputy Special Counsel
GLENN F. IVEY, ESQ.
Minority Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

CONTENTS

Witness	Examination
Martin D. Teckler	
by Mr. Gicale	3
by Mr. Ivey	100

EXHIBITS

Martin D. Teckler Deposition Number	Identified
Teckler Exhibit 1	48, 7758
Teckler Exhibits 2 and 3	61, 7862
Teckler Exhibit 4	77, 7867

PROCEEDINGS

Whereupon,

MARTIN D. TECKLER

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. GICALE:

Q Could you please state your name.

A Martin Teckler, T-e-c-k-l-e-r.

Q And your present business address?

A 409 3rd Street, Southwest, Suite 7200, Washington, D.C.

Q And your business phone number?

A 202-205-6642.

Q Mr. Teckler, this deposition is being conducted pursuant to Senate Resolution 120. The resolution establishes a special committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings & Loan

Association, Capital Management Services, Incorporated, the Arkansas Development Finance Authority and other related matters.

Section 1(b)2(b) and 3 -- first of all, let's go through 1(b)2(b), states the purposes of the special committee are to conduct an investigation and public hearings into and study of the following matters developed during -- arising out of the investigation and public hearings concluded by the Committee on Banking, Housing and Urban Affairs prior to the adoption of this resolution.

B, whether the White House has engaged in improper contacts with any other agency or department in the government with regard to confidential RTC information relating to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation.

C, whether the Department of Justice has improperly handled RTC criminal referrals relating to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation.

And then section 3(e), section states to

5

conduct an investigation and public hearings into and study of all matters that may have any tendency to reveal the full facts about E, the sources of funding and the lending practices of Capital Management Services, Inc. and its supervision and regulation by the Small Business Administration, including any alleged diversion of funds to Whitewater Development Corporation. These areas will be the focus of today's deposition.

This deposition is being taken in advance of a public hearing which will continue on later in November. It is possible that you may testify. We will be asking you a series of questions. You obviously are testifying under oath. If you don't understand a question, let us know, we will rephrase it. The stenographer will prepare a record of questions and answers. The deposition will be treated as committee confidential until the commencement of the hearings.

Prior to the hearings, you will receive a letter from the Committee telling you that you may come to the Senate to review the transcript of your

6

deposition and make note of any corrections for transcription on an errata sheet. You may be represented by counsel. And I note today you're here without counsel. Objections to the form of questions will be noted for the record. Counsel may object on grounds of privilege or relevance. The Committee Chairman may rule on objections where the witness refuses to answer a question.

Do you have any questions at this point?

A No, I don't.

Q Could you please tell us what your present position is?

A I'm the deputy general counsel of the Small Business Administration.

Q And how long have you been in that position?

A Since 1984.

Q And what are your duties as deputy general counsel?

A I have general responsibility as the second attorney in the agency, second-ranking attorney in the agency for the overall management of the agency's

7

legal program and the attorneys that are employed by the agency. I am the subordinate of the general counsel in that regard. He's the first ranking legal official in the agency.

I have particular responsibility in the area of financial law, advising our financial law programs. I'm also the agency's designated ethics officer and I am also the legislative counsel for the agency and deal with the Senate and House of Representatives and the Office of Management and Budget and the White House in that regard with respect to legislative matters that affect the agency.

Q You're a career government employee?

A Yes, I am.

Q During the period 1984 to 1995, have you also served as acting general counsel?

A Yes, I have.

Q Do you recall which periods of time?

A On numerous occasions, and I don't mean to be evasive, but in every instance when there is no general counsel, either appointed or on the premises,

8

I am acting general counsel. So in transitions, for example, when the general counsels change with administrations, I've been acting general counsel. Also, when there's an absence due to health or when there's an absence due to travel or when there's an absence due to any other employment related responsibility, I am acting general counsel.

Q Were you acting general counsel in 1993?

A For a period of time, yes.

Q Do you recall which period of time?

A I believe I was acting general counsel in 1993 certainly from the time of resignation of Michael Wyatt, who was the general counsel serving under the Republican administration until the appointment of John Spotila, who was appointed and became general counsel, I believe, on September 16th, 1993. I can't give you the specific date of Mike Wyatt's departure. I believe it was in early 1993 though in January. So I would have been acting from that time forward. We can supply that information, the specific information for the record, though.

Q Was there anyone that came in subsequent to

9

Wyatt but before you assumed responsibility as acting?
A No.
Q General counsel?
A No.
Q Now prior to coming to the SBA in 1984, what did you do?
A I came to the SBA prior to 1984. I actually came to the SBA in 1973 out of law school. I was a trial attorney at the SBA for almost three years from 1973 to 1976. I believe I came in March of 1973 and departed SBA in March of 1976 for a period of two plus years where I was in private practice here in Washington. Returned to the SBA in 1978 as legislative counsel and have been with the SBA ever since in various capacities.
Q Now, are you aware, Mr. Teckler, of the Committee's request for documents, the request that was made to your agency for documents responsive?
A The recent request?
Q Yes.
A Yes, I am.

10

Q And did you review your own records to determine whether or not you had records that would be responsive to the Committee's request?
A I assisted in the review. Mark Stephens, who handled the document presentation, was the main preparer of the records and provider of the records in that regard.
Q And are you aware of whether or not all the records that you believe are responsive to the request have been supplied to the Committee?
A Yes. I would agree to that.
Q Have you talked to anybody about the substance of your deposition testimony today prior to coming here?
A Generally discussed with Mr. Stephens and Mr. Spotila and other people in our office in preparation, trying to get information in terms of dates and chronology of events which I anticipate might be the subject of your inquiry.
Q Which dates and events did you discuss with Spotila and Stephens?
A Just generally the chronology of events

11

surrounding the matter in 1993 so that I would be able to refresh my recollection of those matters.
Q Did you have any detailed discussion with respect to any of those events?
A No, not detailed at all. Just trying to place things in chronological order.
Q Was there a chronology that you were referring to when you --
A No, just my own memory and chronology, in my own mind, of events.
Q Now, when do you recall first becoming involved in the David Hale matter in 1993?
A Well, actually I remember the matter arising in late 1992. It's my recollection that in late 1992 in my capacity as adviser to the SBIC program or an SSBIC program, I was made aware of an application for leverage by Mr. Hale on behalf of Capital Management Services which was supported by an infusion of capital into the -- capital which related to the supplying of -- to the company of some medical receivables. And we were curious about exactly what the nature of that, of those medical receivables

12

were. In my capacity as adviser to the program, I would have normally been involved in those types of things.
Q And just to clarify that, in that capacity, how involved would you be in an application like that?
A Normally not deeply involved. The program administrators would handle the application, but if they had questions as to interpretations of regulations, interpretations of procedures from a legal standpoint, they would consult the general counsel's office and my staff in my capacity as adviser to that program would be the responsive party in that regard. So we would be involved in that respect.
Q Was there some requirement to brief you on a weekly or a monthly basis?
A No.
Q On the progress of a request like that?
A No, it would be a case-by-case -- it would be a case issue. And we'd be involved in it as advisers to the program in that regard. Not in my

13

capacity as deputy general counsel. As an official of the agency, I wear a lot of hats. Unfortunately it's difficult for people who are not in the agency to understand it. Someone can fulfill a lot of responsibilities. I have a lot of responsibilities, one of which is to this program, one of which is deputy general counsel. In this case, it was the program responsibility rather than the deputy general counsel responsibility. I just happened to be occupying both roles.

Q So it was in -- the program hat that you were wearing at the time that you received --

A That I was involved with the review of that particular situation.

Q Now, who informed you that Mr. Hale had made this application?

A It would have been Mr. Foren, Wayne Foren, who was the head of the program or someone in his direct chain of command, I suppose, and I suspect it was Mr. Foren. My recollection is not specific on that point but it would be appropriate for him to be the one to contact me as the head of the program.

14

Q Did he notify you at that point because he had a concern or was it for some other --

A Yes, he raised a concern.

Q What was the concern that he raised?

A About the validity of the capital infusion and the appropriateness of granting leverage under those circumstances.

Q Did you give any advice as to what steps the agency should take with respect to investigating this request?

A Yes, we were involved in discussing the matter with Mr. Foren who eventually, as I understand it, as I recall, would have normally had discussions with any applicant for leverage. And I believe he had discussions with Mr. Hale in this regard and we advised him to flesh out the matter further from our perspective to assure himself that the capital infusion was legitimate before we would properly consider the leverage application which would be very normal. We would do that in any case where we had a concern. And there was some concern raised by the program people to us and we advised to be cautious in

15

this case.
Q Were you aware of the fact that Mr. Foren had a meeting with Mr. Hale in early 1993?
A I'm not sure that I was contemporaneously aware, but in going through papers that were available to me, I made myself aware of that fact and I'm aware of that fact now.
Q Did Mr. -- were you -- you were not --
A No, I wasn't.
Q You weren't at the meeting then?
A No, I wasn't. I have never met Mr. Hale. I've never seen Mr. Hale.
Q Do you know who was at the meeting?
A I do not. It would not have been unusual for Mr. Foren to be at a meeting with his deputy who was Mr. Shepperson at that time, perhaps other members of his staff who would have been responsible for assessing the leverage application. A leverage application is a normal function of that program, but the circumstances in this case suggested that we need to gather additional information.
Q Well, at some time subsequent you received

16

some information about the meeting. Do you know how long after the meeting occurred you received some information about the meeting?
A I was generally aware of the substance of the meeting probably almost immediately afterwards. Certainly in 1993 I was aware of the substance of the meeting as we continued to discuss this matter and develop a strategy within the agency for dealing with it. It's not abnormal for the program people and for the general counsel's office, my office in particular, again, this financial function, to counsel with each other and discuss the facts of a particular matter and this was a particular matter which we were developing an agency strategy for dealing with.
Q What were you told Mr. Foren said to Mr. Hale and what --
A No specifics in regard to the conversation that they might have had. It was more I had the conversation with Mr. Hale, I'm still suspicious, what should we do.
Q Did Mr. Foren indicate that Mr. Hale

17

mentioned in the meeting a relationship he had with Mr. Tucker and Mr. Clinton?

A Not to me.

Q Did he relate any other details of the meeting other than the fact that --

A No, I think that the general feeling that I had as a result of discussing that meeting with Mr. Foren was that there was some suspicions on the part of Mr. Foren as the head of the program that had not been allayed by the meeting as to the legitimacy of the capital infusion and that we should be cautious about it and take additional actions to satisfy ourselves that the capital infusion was legitimate before we would grant a new leverage.

Q What steps did you agree to take to satisfy yourselves as an agency that capital infusion was proper?

A As with any leverage application of any SBIC or SSBIC, which Capital Management was, we requested that there would be an examination of the activities of the company, current examination which is an ordinary function of our staff to satisfy

18

ourselves that the company was in regulatory compliance and in this case that the capital infusion was legitimate, would have been one of the issues that would have been looked at in that exam before we would agree to make. And I believe he was asking for $6 million before we would agree to make $6 million available to this company or any other company.

Q Do you recall who conducted the examination?

A It would have been conducted by the examination staff. I do not know the examiner by name.

Q Do you recall subsequently discussing the results of the examination with Mr. Foren or somebody from the examination staff?

A Not with the examination staff but with Mr. Foren generally, yes, as events continued to occur with respect to that.

Q What were the results of that examination?

A Generally, it was unfavorable in some regards to the activities of the company. There was no substantiation, as I recall, of the capital

19

infusion at that point. And it further heightened our concerns and our position that we would not make leverage certainly available under those circumstances, and we eventually, because of our concern over the representations made with respect to the infusion of capital, referred the matter to our Inspector General for investigation which is different than examination.

Examination is an ordinary function, a program administration investigation is when there is a suspicion that there might be misrepresentation, for example, to the agency of a criminal nature. We would seek our Inspector General's investigation of that matter so that we can know whether a criminal referral to the Department of Justice of a matter would be appropriate. And that's what we did. We asked the Inspector General to investigate.

Q Were you consulted in the determination?

A Yes.

Q To refer this matter to the Inspector General?

A Yes, I was.

20

Q By Mr. Foren?

A Yes, in the appropriate normal fashion. We would have been a participant in any such determination to refer a matter to our Inspector General.

Q You were notified by Foren that he wanted to refer this to the Inspector General?

A Not only that, we actively participated in the suggestion that it be referred to the Inspector General for investigation. It would be a normal function for the program people and the counselors, legal counselors, in this case my office, to involve a decision of that nature.

Q When you say "we," I understand you are talking about your office, but was there another particular attorney in your program office?

A Mr. Stephens would have been involved normally, and I think in this case there's another attorney in my office involved in cases of this nature, but I don't think he played a significant role in this determination. I was responsible for the legal involvement from my office's standpoint and

21

I would have been the one who was involved and I was involved in recommending that the matter be referred to our Inspector General. And I believe that was done on in May, I know, I think it was May 15th of 1993, if I'm not mistaken. You may want to verify that date.

Q You're sure it wasn't May 5th, 1993?

A You may have the document. I don't have it in front of me. The date would be indicated on the document. I believe it was May 15th, but I may be mistaken on the date. We can verify that. That's an easily verifiable fact.

MR. GICALE: Can we go off the record for a second.

(Discussion of the record.)

BY MR. GICALE:

Q Mr. Teckler, back on the record, I'll represent to you that we do have a memo dated May 5th, 1993 which is the date --

A I accept that.

Q -- from the SBA that this matter was referred to the Inspector General.

22

A I accept that as accurate. I'm working from memory as opposed to the actual document.

Q Do you know whether prior to referring the matter to the Inspector General, whether or not Mr. Hale requested that his application be returned or rescinded?

A I do not know that. I was not privy to any discussion of that nature. That would have been a normal -- or not normal certainly, but that would have been something that the program normally would have responded to or discussed with Mr. Hale. We don't review the leverage applications except from the legal standpoint, so I do not know. I do not know that that occurred.

Q Or withdraw. Do you know whether or not --

A I do not --

Q -- Mr. Foren indicated that Mr. Hale wanted to withdraw his application after the scrutiny --

A I do not have a recollection of that, an independent recollection of that.

Q Now, do you recall that Mr. Bowles was confirmed on May 6th, 1993?

23

A I know that he was confirmed in May, and I do not -- that's a matter of record. Whatever the date is is clearly a matter of record.
Q Do you know whether or not you discussed the referral of this matter to the Inspector General with Mr. Bowles prior to it going to the Inspector General's office?
A I do not believe that I discussed it with him at all in that regard.
Q Do you know whether or not anyone in your agency discussed it with Mr. Bowles?
A I do not know that.
Q Did anyone tell you that they had notified Mr. Bowles prior to the referral of this to the Inspector General?
A No, not to my recollection.
Q After Mr. Bowles came to the agency, was confirmed, did you have discussions with him with respect to this referral?
A I wouldn't say with respect to the referral. I was at that time acting general counsel, and the referral had been made prior to his coming to

24

the agency, if the chronology is correct. And I would have had discussions with him about the case in general, about the matter in general, but they were very few and he advised me to proceed with the case as I would normally proceed with any case under my responsibility, and that I should do whatever was necessary to pursue the case from the agency's standpoint and without any further involvement from him.
MR. IVEY: Just a second. Could you read back the question, please.
(The reporter read the record as requested.)
BY MR. GICALE:
Q How soon after he was confirmed did you have these discussions with him about the matter, the Hale matter?
A I cannot recall specifically. Early in his administratorship, I would have discussed with him what was going on in the general counsel's office in general, and this was one of the matters which was going on in the general counsel's office.
Q Would it have been within the first few

25

days or the first week?
A I can't be specific on that point. It's not unlikely that I would have spoken to him early in his administratorship on this matter.
Q Would you have briefed him orally or in writing on the matter?
A Orally.
Q Did you have an arrangement or eventually have an arrangement with him where you would brief him on a regular basis with respect to issues?
A No, he made it very clear that he was going to have no active involvement in the case, it was my obligation to let him know there was a case in the office. I didn't have any hesitation about that. But he had no continuous active involvement, from my perspective, with this case almost immediately from the time he assumed the administratorship of the agency forward except for these, being advised that there was this matter that had been referred for investigation.
Q What details did you give him about the investigation?

26

A Only that it had been referred for investigation.
Q But did you describe what had been referred?
A Yes, I believe I probably described that there was a leverage application submitted by Mr. Hale, Capital Management Services, which appeared to be unsupportable in terms of the capital infusion which was necessary to justify the leverage and that would have been the extent of the involvement.
Q But you cannot place a point in time when you would have told him this, you cannot state with any certainty when you told him this?
A No, I can't. I mean, my general feeling is that it was early, very early on at this stage of the development of the case, but that's all. And it would have been in the context of important or significant matters within the agency.
Q Now, did you view this as a significant matter in your agency at the time?
A Well, it was a $6 million leverage application that we had requested investigation by

our Inspector General of. We subsequently quickly received notification from the Inspector General that he had referred it to the Department of Justice for investigation, so it fell into the category of something which was being investigated, and as administrator of the agency, in his normal capacity, he would be apprised of a significant case like that. We had other significant cases at the same time which we apprised him of as well.

Q Did you believe it was significant because it was Mr. Hale and he was from Little Rock, was that, was that discussed?

A I've had a lot of experience in the program and a lot of -- over the years and the fact that it was Mr. Hale from Little Rock did not affect -- would not affect my views of significant or nonsignificant. It was more that this was a matter that had been referred for investigation and it involved a great deal of money and it was not something that the agency should commit to without -- at that point, that the agency would commit to without substantiating the validity of the capital

infusion.

Q I will represent to you that Mr. Bowles was confirmed on May 6.

MR. IVEY: No.

MR. GICALE: I'm sorry, his confirmation hearing was on the 6th in May.

THE WITNESS: Yes, I was there. I have some recollection, but I don't have the specific date of when he was confirmed.

MR. GICALE: Off the record for a second.

(Discussion of the record.)

BY MR. GICALE:

Q It appears that Mr. Bowles was confirmed or his hearing was on the 6th and that he was actually confirmed on the 7th. But in any event, this briefing would have occurred shortly, whether it was the 6th or the 7th, this would have occurred shortly after that confirmation, this discussion with him; correct?

A Certainly.

Q Now, were you continuing to receive briefings on the status of the referral to the

29

Inspector General?
A No. I knew that the Inspector General, I was advised that the Inspector General had subsequently referred the matter. And I believe it was five days later, but I may be off on the chronology once again in terms of the exact date to the Department of Justice for investigation, which would be an ordinary, normal response on the part of an Inspector General, of our Inspector General.
They may not have had the resources to deal with the case themselves, I believe, at that time. They may have wanted the Department of Justice to deal with the case from an investigatory standpoint. I knew that at that time. I was advised of that. Cases of this nature in my office and with respect to the general counsel's office, again, not putting on my deputy counsel's hat and overall management responsibility, would have been the responsibility at that point of Mr. Stephens's office to pursue.
Mr. Stephens's office is involved with liquidation of SBICs and SSBICs and the potential liquidation of SBIC and SSBIC. He was the day-to-day

30

person who was involved in the case from that day forward. I had general responsibility for him and for the case as deputy general counsel of the agency -- or as acting general counsel at that point for the agency so I knew what was proceeding with the case but I was not directly involved in it myself at that point from that point forward.
Q Was there a determination made at that point to liquidate?
A No, that came at a later point.
Q So you would -- well, Mr. Stephens was involved day to day with a view towards the possibility of liquidation; is that the idea?
A Correct. Interacting, again, with program people to gather information and substantiate whether we had, we had a financial problem, whether the agency was insecure with respect to this SSBIC. Information that came in in the examination report that we --
(Discussion of the record.)
THE WITNESS: Information that came in in the examination report that we had requested in

31

conjunction with the application for leverage indicated that there might be some financial insecurity for the agency. So at that point, we were developing our position as to whether we should liquidate the SSBIC and take it into receivership.

And Mr. Stephens would have been the person who ultimately would have, from our office, the general counsel's office, who ultimately would have been involved in taking such an action. So he was the person who was involved day to day, people under his direction in our office were involved day to day in assessing that information.

BY MR. GICALE:

Q Now, would Mr. Foren have continued to be involved in this process?

A Yes, he was the head of the program and it would have been normal for him to be involved in the process.

Q Now, would both of them have been briefing you on the developments?

A Mr. Stephens certainly kept me advised. It was his responsibility to do so. I was again acting

32

general counsel. He was under my supervision, he's one of my attorneys in that capacity, even though he had a fair degree of independence in what he did with respect to developing the case and would have been ultimately and was the man who went to court to get the receivership, which we obtained at a later point, he was responsible to brief me as general counsel, acting general counsel.

Q How often did he brief you on this matter after May of --

A Often. Often. Certainly weekly. Often more frequently than that. He kept me advised as information was developed.

Q Was it orally or in written form?

A Orally. He may have given me written memos. I don't have any. And whatever we supplied, you would have, whatever you asked for, you would have that was there. I don't have any with me, but he was responsible to advise me and he did so. Many phone calls at home, that type of thing. He pursued it vigorously.

Q Do you recall, was it Mr. Stephens who told

33

you that the matter ultimately had been referred to the FBI by the Inspector General?

A I'm not sure. That was more of an institutional knowledge among the people who were involved in the matter, and whether it was Mr. Stephens or Mr. Foren or Mr. Shepperson or, would have been one of them who would have told me. I've seen the referral document subsequently, and it was perfectly normal in the sense of what we would do in a case like this, what we've done in other cases like this in the past. I just don't recall who actually informed me of the referral. More than likely, it was Mr. Foren, but I couldn't be specific on that point.

Q Did there come a point in time in July when you learned that records had been obtained from Capital Management offices by the Federal Bureau of Investigation?

A I believe Mr. Stephens apprised me of that fact. He was working the case. He was -- I believe he had taken trips at that point to Little Rock, if I'm not mistaken, to inspect, to check out Capital

34

Management and was knowledgeable of, become knowledgeable of investigations that were underway in Little Rock that were unrelated to this matter, that were being conducted with respect to Madison Guaranty I believe at that time. And that information may have surfaced in those investigations which led FBI agents, and I'm not sure of the date, to be sent to Capital Management to obtain records pursuant to that investigation.

Q Now, did --

A I'm not sure. I must say I'm not sure when in July, if it was in July, but I'm not -- over the course of that summer.

Q Were you informed before the FBI went in to obtain the records that they would be doing so?

A I believe Mr. Stephens was in coordination with both the Justice Department and the U.S. Attorney's office. I'm not sure if he was in direct coordination with the FBI which was investigating on behalf of the Justice Department and the U.S. Attorney's office in Little Rock at that time. So I'm not sure that it was from the FBI or if it was

35

from the Justice Department or if it was from the U.S. Attorney's office, but we were informed.

Q But were you informed before they obtained the records or after?

A Me personally?

Q Yes.

A After, I believe. I really don't have a recollection. They certainly didn't inform me personally. It would have been through Mr. Stephens that I was informed.

Q Do you know whether or not Mr. Stephens was informed beforehand?

A I don't know that. I don't know that for a fact.

Q Do you know whether anybody in your agency was informed before the FBI obtained those records?

A I do not know that for a fact. I couldn't represent on that to you. As I said, this was an independent investigation. This was not the focus of our Inspector General's referral. This was something different than that, which was ongoing, which we really didn't have any knowledge of. We walked into

36

it because we were interested in Capital Management and coincidentally, apparently there was interest in Capital Management for other reasons, because of this ongoing investigation of Madison Guaranty which we found out about over the course of the summer.

Q What is the next development that occurred that you recall having a discussion with Mr. Stephens about with respect to Capital Management after the seizure of the records?

A Because of our concerns, our further follow-up on the leverage application and our, Mr. Stephens's involvement in Little Rock in reviewing Capital Management and in finding out this information about the inquiry that was underway in Little Rock that related to Capital Management, we grew increasingly concerned about the quality of the company at that point.

Keep in mind our concern is not as criminal investigators but to protect the agency's economic interests. We had invested, I believe, at that point $3.4 million of leverage over the years that the company was in operation in that company. So we were

37

a very concerned creditor of Capital Management, and our normal procedure in situations where we have such concerns would be to determine whether liquidation of the company was appropriate to protect SBA's interests and we were evolving to the point where we were determining that that should be the case in regard to this matter. Subsequently, we took that action.

Q You made a decision to seek liquidation?

A To seek liquidation of Capital Management; correct.

Q Did you also learn at some time in August of 1993 that the U.S. Attorney's office was considering an indictment of Mr. Hale?

A Yes, that information was made known to Mr. Stephens. Based on information that was developed through this parallel investigation which did relate to the SBA, Mr. Stephens was advised at that point that an indictment of Mr. Hale was possible, and I believe he was advised that Mr. Hale had been provided with a copy and his attorney had been provided a copy of a draft indictment and that an

38

indictment was probably imminent. We were certainly convinced that at that point that we were insecure and we should proceed to liquidation and seek the receivership of Capital Management, which we did.

Q Now, do you recall whether you received a copy of the draft indictment?

A I know I received a copy of the indictment. I believe I received a copy of the draft indictment. I know that Mr. Stephens was privy to a copy of the draft indictment and it would not have been unusual for him to show me or provided me a copy of the draft indictment. I'm just not certain that I had the draft indictment before the indictment actually came down. I believe that I did.

Q And do you know whether or not Mr. Foren supplied a copy of that in a memorandum to Mr. Bowles with respect to the upcoming indictment.

A No, I don't recall that.

Q Now, this would have been in August of 1993; correct?

A The date of the indictment is of record.

Q No, just the discussions with respect to

the draft indictment?
A Between me and Mr. Stephens?
Q Yes.
A Yes, that would have been about the time it was taking place. I could pinpoint it for you if I had the date of the indictment itself. It would have been prior, obviously prior to the date of the indictment. If you want to go off the record for a second.
MR. GICALE: Yes, off the record.
(Discussion of the record.)
BY MR. GICALE:
Q The indictment was later on in September 1993. What I would like to know is did you have any discussions, any subsequent discussions with Mr. Bowles about the status of the case, and discussions between the initial briefing with respect to the matter being referred to the Inspector General and the time in August when you had learned that the FBI had seized some records and that there was a possible draft indictment that your agency had.
A Not that I can recall. He was very adamant

about not being involved in the case and I did not involve him, from my perspective, in what we were doing. Certainly not on any kind of a regular basis. I can't recall any discussions with him during that time period about this matter.
Q Now, there came a point later on in September when you obtained, your agency obtained a receivership?
A Correct.
Q The Capital Management was put into receivership?
A Correct.
Q And a receiver was appointed?
A SBA was appointed receiver and SBA appointed an agent to act as receiver for us at that point. That's very normal, that's what happens when we liquidate an SBIC and take court action to take a receivership. We have specific statute authority to do that.
Q And around that time or just subsequent to that time, did you go in to Mr. Bowles and indicate that this had been done?

41

A May have. I do not recall that specifically. Again, that would not have been an abnormal thing to do, to advise him the agency had taken such an action.

Q Now, when Mr. Bowles had indicated to you that he did not want any further information with respect to the case for you to handle the case in the normal course, did he indicate why he didn't want to become involved in the case?

A There was general press information which had surfaced, I believe, in the media in Arkansas where the name of David Hale had been associated with the administration. And there was a concern, I believe, that every indication of independence in our investigation be preserved. Mr. Bowles was a political appointee confirmed by the Senate, appointed by the President and he wanted to give us complete independence of our pursuit of the case. Wanted to give no appearance to us whatsoever that he was influencing our involvement in the case. I believe that was his major concern in that regard. That's why he --

42

Q Did he state that concern to you when you first started discussing this issue?

A Yes.

Q Now, in September did you go into Mr. Bowles's office and indicate to him that the U.S. Attorney's office was ready to indict Judge Hale in Arkansas and that he might want to give the White House a heads-up?

A No, I did not say that to him that I recall. It's possible that I advised him that the indictment was possible, but I don't think that I would have said he should give the White House a heads-up.

Q Did you use any words similar to "heads-up" or did you indicate in any way Mr. Bowles should tell the White House that this was --

A No.

Q -- occurring or about to occur?

A Not that I recall.

Q Did you suggest to him in any way that --

A Not that I recall.

Q -- that he should let the White House know?

A No.
Q Or that it would occur?
A No.
Q Do you know whether or not Mr. Bowles contacted the White House and informed them of this possible indictment of Mr. Hale?
A No.
Q Do you know whether or not Mr. Bowles talked to Mr. McLarty about the Hale matter and the referral in May of 1993?
A No.
Q Do you know whether Mr. Bowles or anyone at your agency talked to anyone in the White House about the Hale matter between the time it was referred to the Inspector General in May of 1993 and the time Mr. Hale was indicted in September 1993?
A No, I don't.
Q Did you talk to anybody at the White House during that time?
A No.
Q Now, Mr. Spotila came to the agency on September 16th, 1993; correct?

A I believe that's correct.
Q So then he became general counsel and you --
A Correct, reverted to deputy general counsel. No longer acting general counsel.
Q Did you continue to be briefed on the matters -- on the Hale matters after Mr. Spotila came on board?
A Yes.
Q And did you then, in turn, start to brief Mr. Spotila about these matters?
A In general, yes, he was responsible for the entire office. I, as his direct subordinate, briefed him on all matters within the office of his area of responsibility, including that matter.
Q What kinds of details did you supply him with respect to this, the Hale investigation? And I'm talking with Mr. Spotila.
A In regard to the Hale investigation, when he assumed responsibility as general counsel, I probably did not provide him with many details of the case. At that point, he would have been provided

45

with those kinds of details by Mark Stephens who was directly responsible for pursuing the matter at that point. We had, I believe -- can we go off the record for a moment?

(Discussion of the record.)

THE WITNESS: We had placed Capital Management Services in liquidation by that time, which is an institutional process that designates, they're taken out of an active status and that we were going to set about liquidating the indebtedness owed to the agency and we had instituted a receivership in Little Rock, Arkansas of the company where SBA was granted receivership of the company. Mark Stephens pursued that as SBA's trial attorney and obtained the receivership. We were, had become the receiver of Capital Management at the point that Mr. Spotila became general counsel.

And so it was appropriate for him to know of that. It was a case which was an important case within the office and we gave him a briefing on that case as we did with all other important cases in the office. And all matters in the office since he was

46

responsible for managing the office at that point. But Mark Stephens would have been the one who supplied him with the details of the case since I was the attorney who was working on the matter.

BY MR. GICALE:

Q Do you know whether Mr. Spotila indicated to you that he wanted to be recused or he should be recused from the case as well when you started to brief him on this after he came on?

A Not initially. At that point, he certainly did not indicate that.

Q Now going back a minute to Mr. Bowles's request not to be involved, and this is back in May of 1993; correct?

A Correct.

Q Just shortly after his confirmation?

A Shortly after.

Q Was this request formalized in some manner in terms of a memorandum?

A At a later point. He ordinarily would not have needed to be kept from the case because he would not be involved in the case. But he made it very

clear that he wanted us not to feel that he was influencing us in any way based on the media involvement. He was very sensitive to any implication that he was influencing his career people in pursuit of this matter. And I think that's why he said what he said at that time and he kept to it.

He did not influence us. He did not involve himself in my office in my responsibilities in dealing with that case during that time period. At a subsequent point, he formalized his recusal in the memorandum to me at that point as deputy general counsel in the acting agency ethics officer.

Q That was not until March of 1994; correct?

A Correct.

Q So up until that point in time, it was just an oral representation to you that he would not become involved?

A And the reality was that he was not involved but both are correct.

Q What changed things and prompted him to submit a written recusal?

A I don't know. You'd have to ask him

literally for his own reasons for that, for submitting --

Q Did he state his reasons to you why he wanted it formalized at some point in time in 1994?

A I do not recall him stating orally to me why there was a great deal more controversy surrounding the Capital Management matter and the subsequent allegations that David Hale had made that had evolved since May of 1993. There was a lot of water under the bridge in that case at that point in the press and I believe that he was sensitive to that and wanted formally to memorialize his recusal from the case at that point.

But, as I said, he had practically recused himself or removed himself from formal involvement with the case right from the beginning and it was, the written document memorialized his position when he wrote it to me in writing. But as a practical matter, he had comported himself that way from the beginning.

(Teckler Exhibit 1 identified.)

BY MR. TECKLER:

Q I show you what's marked for identification as Teckler Exhibit Number 1. Specifically, tab O and there's a memo there dated August 9th, 1993 from Wayne Foren to Erskine Bowles, subject: Capital Management Inc. And your name, "Martin Teckler," is on that memo. Do you recall seeing this memo?

A May I have a moment to examine it.

Q Sure.

(Witness reviewed the document.)

A Yes.

Q Now, is that your signature on the memo?

A Yes, it is.

Q Would this have been a memo that was prepared by Mr. Foren for Mr. Bowles that you would have signed off on --

A Yes.

Q -- before going to Mr. Bowles?

A Correct.

Q Do you recall whether or not you discussed this memorandum with Mr. Bowles?

A I do not believe that I did. I believe it was submitted to him by Mr. Foren. I would have

reviewed it for correctness and it would have been submitted by Mr. Foren.

Q Now, this memorandum outlines in some detail the status of matters involving Mr. Hale as of August 9th, 1993 as, at least, it relates to your agency; correct?

A The detail, it's not significantly detailed. It does relate to the status of the case at that point in time. And that was we were proceeding toward the receivership -- liquidation of the company and receivership at that point.

Q But, in any event, as of this point in time, Mr. Bowles had indicated he did not want to be briefed on any details with respect to the case; correct?

A He had indicated that he wanted to remain out of the case and he didn't want to influence the process of the case. And I do not believe that this memo should be construed as involving him in the details of the case or in the process of the case. It was more informational as to where the agency stood at that point in time on this matter.

51

Q If he was to remain out of the case, why would it have been necessary to give him a memo informing him of the status of the case as of August 9th, 1993?

A It's likely that, and what did ensue was that we went to receivership. It was very likely that there would be press surrounding this matter and there was, subsequent to the receivership being instituted. And so it was appropriate to let him know what our status was at that point in time.

Q I'm also going to show you what's labeled as Teckler Exhibit 1, attachment P, and there's a memorandum dated September 21st, 1993 to Erskine Bowles from Wayne Foren regarding Capital Management. Could you review that for a moment, please.

(Witness reviewed the document.)

Q Now, do you recall this memorandum?

A Well, it indicates that I received a copy, and it would have come from our files and so I received it. I do not recall it outright, but it's a memorandum which was prepared by Mr. Foren describing

52

the status of the Capital Management matter at the particular point in time that the memorandum was dated.

Q Do you recall whether or not you discussed this memorandum with Mr. Foren?

A No, I do not.

Q Do you recall whether or not you discussed this memorandum with Mr. Bowles?

A No, I do not.

Q Now, amongst other things, this memorandum informs Mr. Bowles that a receiver has been appointed and that the U.S. Attorney's office is scheduled to make a presentation to the grand jury on Tuesday September 21st and that they are expecting indictments on Tuesday or Wednesday against Judge Hale and two other individuals; correct?

A Correct.

Q Now, once again, at this point in time, you indicated that Mr. Bowles said that he wanted to be out of the case; correct?

A Correct.

Q And once again, further information was

being supplied to him with respect to the status of the case; correct?

A That is information with respect to the status of the case, that's correct.

Q Now, if he was out of the case at this point, why was this information supplied to him, if you know?

A I do not know. Mr. Foren prepared the memo. But my surmise would be to let him know what the agency's position was versus Capital Management at that point in time which would not have been extraordinary. It would not have led to any influence of action that we were taking or anyone else was taking.

Q Well, would it be fair to say that at this point in time, while Mr. Bowles indicated that he wanted to be out of the case, he did not indicate to you that he did not want to be informed as to the status of the case?

A No, that would have -- information as to the status of the case and nature of the memorandums -- memoranda which you've shown me would

be ordinary information which the agency had, the administrator would normally be advised of by his staff. It would not be information which would be, which would involve the administrator in the conduct of the case.

In both cases, the information is of actions that were taken or were to be taken, the decisions for which had already been reached by staff appropriately out of influence from the administrator. So it's not information which would not be presented to him so that he would know what the agency's posture was with respect to the case.

(Discussion of the record.)

BY MR. GICALE:

Q In May of 1993 when Mr. Bowles said that he wanted to be out of the case, what is your understanding as to what he meant by that?

A I believe that he wanted us to pursue the case independently and without his involvement in terms of consultation or approval of courses of action that the appropriate officials within the agency would take.

55

Q But that he would still like to be briefed with respect to the developments in the case?
A I don't think briefed on any kind of a regular basis. The memoranda which you've shown me merely advised him of the developments in the case. They did not request his approval or his involvement in the course of action which was indicated in the memoranda, so I think they were supplied for the purpose of information as opposed to his being able to influence the course of conduct that was taken by agency personnel.
Q Now, ordinarily it's your experience as an ethics officer when someone recuses themselves from a case, not only do they not get involved in decisionmaking, but they also refrain from receiving information with respect to the case?
A That's not necessarily true and especially in the case of administrators of the agency. Again, you have a necessity for the agency to interact on a number of different levels with the press and with inquiries from our oversight committees. So it's not inappropriate for the status of a case to be

56

discussed with an individual who has not formally recused himself by memorandum as Mr. Bowles had in a case, as these documents discussed the status. But when someone says they want to be recused from the case or just not involved in the case, it's from the standpoint of influencing the pursuit of the case and from the standpoint of influencing decisions made or being involved in making decisions with respect to how the case is pursued.
Q Once he had recused by virtue of a memorandum, did you still think that it would have been appropriate for him to receive briefing memos with respect to the status of the case?
A He, as the administrator of the agency, would receive information regarding all activities conducted by the agency in a general sense. Memoranda regarding the status of a case is not an unusual thing even under recusal. Again, formal recusal from involvement in a case is, in my estimation, influencing decisionmaking, being involved in decisionmaking, being involved in the conduct by the staff of the particular matter.

Q So even at that point in time when he, when he later formally recused himself and as reflected in a memorandum, you still think it was appropriate for him to subsequent --

A I don't think it was appropriate and I don't think he was briefed, because he made it very clear that he didn't want to be briefed.

Q After March of 1994?

A He reiterated it with his recusal.

Q Now, between the time you say you may have discussed the impending indictment with him in September 1993, and I'm talking about Mr. Bowles --

A I'm not sure that I said I discussed it with him. You may want to read that back.

Q I believe you said you may have discussed it with him if you knew that there was an impending indictment?

A It's possible, but I don't think I discussed it with him.

Q Okay. Do you recall whether or not you discussed the impending indictment --

A I do not --

Q Do you recall whether you discussed the impending indictment of David Hale with Mr. Bowles in September of 1993?

A I do not recall. I do not recall.

Q Is it possible that you may have?

A May we go off the record for a moment.

MR. GICALE: Sure.

(Discussion of the record.)

(The reporter read the record as requested.)

THE WITNESS: I do not believe that I did. I know that I've been shown memorandum of August which indicated it was a possibility, which was a written communication to him. I don't think that -- I don't recall whether I discussed it orally when it did happen with him.

BY MR. GICALE:

Q Do you recall any other discussions with -- any discussions with him between September of 1993 and the time of his formal recusal in March of 1994?

A Any --

Q With respect to the Hale matter?

A No, I don't.

59

Q Now, did you continue during that time period to be briefed by Mr. Stephens on the matter?
A Yes.
Q Now, do you recall a point in time in November of 1993 when Congressman LaFalce had requested information with respect to Capital Management?
A Yes, I do.
Q And what was your involvement with respect to that request?
A Congressman LaFalce had requested a report from the agency on the Capital Management matter. This was subsequent to the institution of the receivership and subsequent to allegations in which Mr. Hale surfaced in conjunction with his indictment regarding information which he alleged he had. And Congressman LaFalce, as the Chairman of the House Small Business Committee, requested a report on the receivership of Capital Management and the events that led to the receivership from the agency, I believe, on November 4th, 1993.
Q Did you assist at all in preparing the

60

response to Congressman LaFalce?
A Yes, I did.
Q And what was the level of your involvement in that?
A I reviewed the material in general that was requested and was going to be prepared as a report which was prepared by Mr. Stephens under my supervision for inclusion in that report.
Q So you reviewed the letter that was sent along with the attachments that were sent?
A Well, interestingly enough, in that regard, the week before the report was sent to Congressman LaFalce, I was on business out of Washington. I believe that the letter was prepared independently by Mr. Stephens, who had gathered the information and prepared the report and that it was sent on November 15th to Congressman LaFalce and that I was not involved in the preparation of the letter because I was out of town until November 16th.
But I was knowledgeable of the fact that a letter had been prepared and a report had been prepared for Congressman LaFalce at that point. I

did not review the letter, however, as it was transmitted --

Q Nobody faxed you a copy of the letter where you were?

A Were I in the office, I would have reviewed it and it would have been normal that I review it. But I just wasn't there to review it.

(Teckler Exhibits 2 and 3 identified.)

BY MR. GICALE:

Q Showing you what's marked for identification as Teckler Exhibit Number 2, which is a letter dated November 15th, 1993 to Honorable John J. LaFalce regarding Capital Management from Erskine Bowles. Is this the letter that you subsequently reviewed after being -- after it was transmitted to Congressman LaFalce?

(Witness reviewed the document.)

A Yes.

Q Now, at the beginning of that letter, there is a notice saying that "The information contained herein has been determined to be confidential in nature and therefore not releasable to unauthorized

parties. Disclosure of this information may violate federal law, e.g., Privacy Act of 1974, the Right to Financial Privacy Act of 1978, and 18 USC, Section 1905. Utmost discretion should be exercised."

A Correct.

Q Now, were you aware that that notice was put on the letter?

A Yes.

Q Did you subsequently become aware of that?

A Yes, I may even have been aware that the notice would be put on the letter before it was sent.

Q That was common practice?

A That normally is the procedure.

Q Now, there was a list of the attachments submitted to Congressman LaFalce as well as a number of attachments. Did you subsequently review the list and the attachments that were sent to Congressman LaFalce?

A Oh, yes, subsequently, yes, I have.

Q How long after this letter was sent to Congressman LaFalce?

A Sometime after. I did not prepare, again,

63

I did not prepare the attachments or the list or the letter at that time.

Q Now, there came a point in time when you were informed that someone from the White House had requested copies of the same information that was sent to Congressman LaFalce; correct?

A It came a point in time when I was advised of that matter.

Q When was that?

A The first that I knew that someone from the White House received a copy of that material was, I believe, November 24th, 1993 when we were advised of it. I was advised of it by Mr. Mackay and Agent Gillis of the FBI.

Q Prior to November 24th, 1993, neither Mr. Stephens or Mr. Spotila informed us of the fact that Mr. Eggleston from the White House had requested this information from the SBA and, in fact, it had been submitted to Mr. Eggleston at the White House?

A No, that is correct.

Q And just to be clear, did anyone ask for advice prior to submitting these materials to the

64

White House?

A Not specifically on that matter, no. Not from me.

Q Well, from anybody in your office?

A Not that I'm aware of. And I don't mean that to be an evasive answer. I am not aware of anyone asking for advice, prior to the submission of those materials, on submitting those materials to Mr. Eggleston in the White House.

Q Well, more specifically, did Mr. Spotila ask you for advice as to whether or not these materials -- the materials submitted to Congressman LaFalce could be submitted to the White House?

A Not in that context. Not specifically the material submitted to Congressman LaFalce that I'm aware of, no.

Q Is there another context in which Mr. Spotila sought some advice as to whether or not these materials or similar materials could be submitted to the White House?

A Subsequent to my becoming aware of the submission of the materials to the White House, I

65

discussed that issue with Mr. Spotila, and Mr. Spotila has maintained to me that he generally thought, based on conversations with me, that materials that we had the capability of submitting materials to the White House upon appropriate request or any other agency of government, for that matter, on appropriate request, but we did not have a discussion with respect to the submission of these particular materials, prior to the submission of the materials, to Mr. Eggleston, which I found out about subsequent to their submission.

Q Now, Mr. Spotila indicated, subsequent to November 24th, 1995, when you learned of this submission --

A Correct.

Q -- that he submitted these materials or agreed to submit these materials to the White House, based on conversations that he had had with you, prior to the submission of these materials to the White House?

A He didn't indicate that in that fashion to me. Subsequent to that time he's indicated that he,

66

based on conversations with me, generally felt that --

Q Based on conversations with you generally when?

A I assume, prior to the submission of the materials to Mr. Eggleston, that it was not inappropriate for the Small Business Administration to communicate on matters with the White House on appropriate requests from the White House.

Q Did you ever indicate that to him prior to the time he submitted those materials to the White House?

A Not with respect to those materials. And I cannot recall specifically those conversations, but the fact of the matter is that on appropriate request from the governmental agency for materials, depending on what the materials are, it would not be inappropriate to provide materials to another governmental agency or to the White House in this case, in a case.

Q It would depend on what the materials were?

A It would depend on what the materials were,

67

that's right, and what the request was for, the purpose of the request.

Q Now, many of these materials were governed by the Privacy Act?

A Well, in fact they were not.

Q Some of them were?

A Subsequent review of the materials, because it's been a point of concern, indicates that there are no materials within that submission which would be Privacy Act protected.

Q Was the, for instance, the referral to the Inspector General something that, a copy of that which was listed as an attachment, was that something that could have been released, should have been released to the White House?

A A copy of the referral to the Inspector General could have been released under the Privacy Act. There was no -- there's no provision in the Privacy Act which would prohibit the release of that information that I'm aware of, although I am not the Privacy Act officer in our general counsel's office.

Q Well, in light of the allegations that

68

occurred in the press and with respect to this matter, the allegations that Mr. Hale had been making against the President and other people, you think it was appropriate to send these matters, the attachments including the referral to the Inspector General to the White House?

A Were I consulted prior to the submission of the material, under those circumstances I'd like to think that I would have raised that concern because of the allegations, merely because of appearances, not because of legal impropriety. But I was not, and I did not -- I was not able to raise those concerns because of that.

Q So then while you may have had some general discussions with Mr. Spotila about the appropriateness of submitting --

A Not these --

Q -- documents to the White House, you did not have discussions with him with respect to these documents?

A That's correct, prior to --

Q Documents submitted prior to their

69

submission.
A Prior to their submission, that's correct.
Q And if you had been asked about these materials, you would have raised the concern about the appearance?
A That's conjecture at this point. It's possible. I'm experienced in these matters. Mr. Spotila had been general counsel of the agency for two months at that time. He's not as experienced as I am in dealing with or was not as experienced as I was at that time in dealing with the press in dealing with oversight committees, in having an insight into appearances as opposed to legal prohibitions on submission of documentation. While there might not be a legal prohibition on referral of documentation, the question of appearance of handling documentation under those circumstances which pertained to Mr. Hale's allegations at that time was something that I would have hoped that I would have raised had I been consulted.
Q Now, by November 24th, Mr. Spotila was still being briefed about the status of the case;

70

correct?
A Correct. And when you say "being briefed," it was not on a daily basis or even on a periodic basis. He was still knowledgeable that the case was being pursued by Mr. Stephens under my direction in the office as one of the matters which he was overall responsible for as general counsel.
Q Now, did there come a point when he recused himself from the matter as well?
A He never formally recused himself from the matter in terms of a written memorandum. But in terms of November 24th, he made it explicit to Mr. Stephens and me that he should be kept from involvement in the matter because of the sensitivity of the inquiry I believe from Mr. Mackay with respect to the transmission of the documents and he wanted to be extra cautious not to be involved in a situation like that.
Q Now, his reason, his reasoning at that point was because Mr. Mackay from the Justice Department had raised a concern?
A No, Mr. Mackay, I believe raised no

71

concern. We explained the submission at that point to put things in perspective. The documents I believe given to Mr. Eggleston on November 16th, they were reobtained by the agency on November 20th.

Q At the Department of Justice's request; correct?

A I believe Mr. Stephens consulted with the Department of Justice at the direction of Mr. Spotila subsequent to the documents having been provided. Was advised to have the documents returned. The documents were returned by Mr. Eggleston to Mr. Stephens on November 20th. On November 24th, I believe was the Thursday, it was the Wednesday before Thanksgiving and that can be checked in the calendar, we had a regularly scheduled meeting with Mr. Mackay at which Mr. Stephens was going to go through the SBIC program for Mr. Mackay had been appointed special prosecutor at that point in time.

And the meeting was scheduled to provide advice to him and his duties as special prosecutor and this segment of his responsibilities dealt with the SSBIC program. Mr. Stephens came to me on

72

November 24th at that time and said that Mr. Mackay wanted to discuss the submission of the documents to the White House, the report to the White House, to Mr. Eggleston. And at that point, I became aware that the material had been submitted to the White House.

Q And returned?

A And returned. Which I was not aware of prior to that time. And Mr. Spotila was brought into the discussion as well for purposes of Mr. Mackay satisfying himself as to what had happened. We explained what had happened to Mr. Mackay and to Agent Gillis at that time, primarily Mr. Stephens and Mr. Spotila did the discussing. I was not aware of the circumstances under which the transmission had been made.

I listened, and Mr. Mackay asked a number of questions about the nature of the documentation at that point. What I knew of the documentation, I was involved in that discussion, as to the ordinariness of the materials that were included in that report. Mr. Mackay, I believe, went away satisfied at that

73

meeting that confidential matters which would in any way inhibit his ability to investigate his -- to fulfill his responsibilities as special prosecutor were not made available in that transmission. I do not know that for a fact, I'm only surmising. That was my perception of what Mr. Mackay said at the meeting and we finished the meeting. We went on with the discussion of the SBIC program as had been scheduled with Mr. Stephens and Mr. Mackay.

Q But, in any event, you were made aware of the fact that when Mr. Stephens informed the Justice Department, specifically Mr. Carver from the Justice Department, that documents had been submitted to the White House, that Mr. Carver from the Justice Department told Mr. Stephens that he should retrieve those documents?

A I became aware of that in the course of that discussion.

Q Now, was it at that point that Mr. -- it was just after that point in time that Mr. Spotila indicated that he would recuse himself from this matter?

74

A He became highly sensitized as a result of that discussion, I believe, to the need on his part not to be involved in the case from the standpoint of any ordinary -- any ordinary involvements that did not bear even on the conduct of the case and made it very clear to Mr. Stephens and me to just pursue the case as we ordinarily would and that he would not influence our pursuit of the case.

Q Was there any discussion about a formal recusal on the part of Mr. Spotila?

A He discussed it with me. I did not think it was necessary, frankly. Once again, you have to keep in mind that Mr. Spotila is the head of the office. And he does bear overall responsibility for all of our actions, but if he kept himself away from the case, delegated the responsibility to Mr. Stephens and me and our staffs to run the case, there was no need -- the mere piece of paper formally recusing him would, in my estimation, be merely a piece of paper.

It would be the actions speak for themselves and he did stay out of the case. Did not

75

influence our decisionmaking in the case. Has not influenced our decisionmaking in the case since that time. But, again, he's the general counsel and he's responsible for the overall management of the subordinates and we are his subordinates.

Q So you did not believe at that point in time that it was necessary for him to formally recuse himself?

A No, and I do not believe that to this day.

Q At that point in time, did you also discuss the turning over of these documents to the White House with Mr. Bowles?

A No, I did not.

Q Did you brief him on, sometime subsequently, did you brief him on the discussions with the Justice Department?

A I did not. These discussions that -- Mr. Mackay.

Q The discussions with respect to Mr. Mackay?

A No.

Q So that from the time that you had this meeting with Mr. Mackay or shortly thereafter, the

76

time that Mr. Spotila indicated that he would recuse himself to the time that Mr. Bowles formally recused himself, did you have any other further discussions with Mr. Spotila or Mr. Bowles about the Hale matter?

A With Mr. Bowles, I can say no. I do not believe so at all.

With Mr. Spotila, only in the most ordinary sense of passing conversation. His office is next to mine. He is the general counsel. I'm the deputy general counsel. Not in any detail or substance whatsoever, but only that Mr. Stephens might be going to Arkansas or doing something with respect to the case. Just from a management standpoint only. The normal -- when I say he's the general counsel, he's responsible for travel vouchers and things of that nature, so he would have known of that, but that's all.

Q Did you discuss with Mr. Spotila the appropriateness of whether Mr. Bowles should recuse himself in March of 1994?

A I don't believe so. I think the reason that Mr. Bowles submitted his recusal to me was that

77

I had, I'm the agency ethics officer and in the course of his confirmation, for example, there were matters that he had been involved in in his private life that he needed to be recused from as administrator of the agency. And I think that he submitted his recusal to me under those circumstances, but I did not discuss those matters with Mr. Spotila.

(Teckler Exhibit 4 identified.)

BY MR. GICALE:

Q Showing you what's been marked for identification as Teckler Exhibit Number 4. This is a memorandum dated March 3rd, 1994, it's from Erskine Bowles to Martin Teckler, subject: Capital Management.

Is this a copy of his memorandum to you recusing himself from all involvement in the SBA's ongoing investigation of Capital Management?

A Yes, I believe it is.

Q And, again, did you discuss this recusal memorandum with him prior to receiving it from him, from Mr. Bowles?

78

A If I did, it would have been coincidental with the preparation of the memorandum and submission to me. I didn't discuss, you should prepare a recusal memorandum. He decided to do that on his own and submitted it to me. I do not recall specific conversations prior to receiving it. It's possible, coincidental with receiving it, that he discussed the substance of it with me, but that's all. I did not advise him on the matter.

Q Now, who was Cecelia Seay?

A She was the individual who was appointed as our receivership agent in Little Rock. Keep in mind the receivership of Capital Management was instituted in federal district court in Little Rock where the company was located. When we obtain a receivership, we will normally take over the company, as we did in this case, and its books and records and manage the affairs of the company at the location at which it was doing business. And she was the person who SBA appointed to conduct those affairs for us subsequent to the receivership.

Q Now, from the time you first heard about

the Hale matter in late 1992 to the time that Mr. Bowles recused himself formally in March of 1994, did you ever tell Mr. Bowles, Mr. Spotila or anyone else that they should give the White House a heads-up about the information with respect to the Hale case?

A No.

Q Did you ever tell those individuals or anyone else at the SBA that they should inform the White House about the status of the SBA's investigation of Hale?

A No.

Q Did you ever talk to the media about the status of the SBA case involving Hale or the SBA investigation?

A Yes. I was unfortunately appointed as a point person for discussing these matters with the media and had many contacts with the media on this matter. I say "unfortunately" for me, not unfortunately for any other reason.

Q Was there a communications officer at the SBA?

A Yes, there certainly was. And I don't mean

to infer that our communications office did not get contacts from the media, either. But the matter had been placed into a legal status by virtue of our institution of a receivership and most of the inquiries that we were getting from the press related to either the receivership or the allegations of wrongdoing which Mr. Hale had raised in conjunction with his criminal indictment. So it was felt appropriate that a lawyer be appointed to respond to these types of inquiries, and so I was the person who was appointed to respond to the inquiries.

I might add that I've done this in other cases where there's been this kind of legal visibility and so that probably had some bearing on why I was the person who was selected as well.

Q Well, did you respond orally or with some kind of prepared statement from the agency?

A I responded orally for the most part. I was interviewed by ABC News, videofilmed at one point. I gave many responses over the phone to reporters for various newspapers here and elsewhere. I did not prepare any press releases myself. That

81

would have been the work of the communications office. I am not aware of any press releases on the matter, although there may have been press releases. You may have documents which would be of that nature which I'm not aware of or I don't recall. It was a couple of years ago.

Q Well, did you ever state to the news media that certain activities were not criminal in nature that your agency was investigating?

A That, I mean that's too vague for me to respond to. I can attempt to respond to what I think is your line of inquiry. If you want to rephrase the question, I'd be glad to respond specifically to what I recall. But that, I couldn't respond to anything that vague.

Q Well, what did you tell the media about the status of the SBA's investigation?

MR. IVEY: Is there a particular time frame?

MR. GICALE: This would have been in September of 1993.

THE WITNESS: At that time my responses to

82

the media centered around SBA's involvement in the Capital Management matter. We had no investigation ongoing. We're not criminal investigators. The investigation which lead to Mr. Hale's indictment and eventual plea of guilty was the investigation being conducted by the criminal investigators in Arkansas.

Our involvement was one of, from the time that we instituted the receivership, collecting the money which was owed to the SBA and cooperating fully with the investigators and with the prosecutors by providing them any information which they sought from us from our files which would be relevant to their cases, and to their case against Mr. Hale and others who were indicted. And so my responses were primarily geared towards SBA's involvement in the matter which was at that point as a receiver, not as an investigator or as a prosecutor.

BY MR. GICALE:

Q Were you asked whether there were some potential criminal acts that were being investigated?

A Again, that's in context, that's probably too vague to respond to. There was, there were

83

allegations certainly against Mr. Hale which led to his indictment. And Mr. Hale was, after all, a president of the company which we had obtained a receivership over. So I was, I was queried about Mr. Hale. There were allegations which Mr. Hale was raising in his, on his behalf at that time, and I believe in an effort to plea bargain so I was asked about those allegations.

I had no information about those allegations which I could provide to anybody, Mr. Hale's allegations, that is. I could discuss the criminal indictment of Mr. Hale which had taken place during that time frame which I was privy to which was public information, but again we weren't prosecuting that case. That case was being prosecuted by somebody else. We were bystanders. In fact, we were the aggrieved party from which those criminal allegations against Mr. Hale arose.

Q All right. But were you asked to comment on the other allegations that Mr. Hale was making?

A From time to time I was asked to comment, and my comment was always that we had no information

84

which would substantiate what Mr. Hale was alleging in his defense or his allegations in an attempt to be, to plea bargain.

Q Well, did you ever say to anyone that the allegations he was making were not criminal in nature?

A I don't recall that. But again, when you say "the allegations he was making," you'd have to talk about specific allegations and I'd have to jog my memory to recall whether specific allegations were raised and they were not criminal in nature. I just don't recall that.

Q Well, what allegations do you recall that he was making?

A He made allegations that at that -- subsequent to his indictment that he had been pressured by the President of the United States to make a loan or an investment through his SSBIC Capital Management. We have no information which would support that. I believe I said that on numerous occasions.

Q Well, how could you make a statement like

that if you did not have information with respect to the investigation?

A I said we had no, SBA had no information to that effect. There was no information in SBA's files. I was not privy to whatever information other investigatory bodies might have, I only had the information which SBA had at its disposal and I was only questioned as a SBA representative, not as a representative of any law enforcement activity. We were only concerned with the civil case and only concerned with the information which we had. We had no such information.

Q Well, how could you comment on whether or not the information you had could be characterized as activities not criminal in nature when you weren't responsible for the criminal investigation?

MR. IVEY: Well, I don't think that's his testimony.

THE WITNESS: My response to your question was that the information which we had were not, did not show, did not support the allegation that Mr. Hale was making with respect to the President. I

believe that was my response to that question.

BY MR. GICALE:

Q Did officials from the White House contact you or someone at the SBA and ask that you make this characterization due to the mention of Whitewater Development?

A No, not me. And I have no knowledge of them contacting anyone else.

Q You did not talk to any representatives from the White House?

A Not with respect to that matter or any other matter, for that matter.

Q For any matter?

A No.

Q Did anyone at the SBA in the communications office or anyone else say to you that officials for the White House would like you to make a characterization?

A No.

Q Like that?

A No, not to my knowledge.

Q Due to the mention of Whitewater?

87

A No, we called it as we saw it. We called it straight.
Q Do you know whether or not -- strike that.
Did you have any discussion with representatives from the FBI with respect to the comments you made with characterizing the proof that the SBA had at that point in time, September 1993?
A No, not with respect to that. The only contact I had with the FBI was Agent Gillis accompanying Mr. Mackay and subsequently reviewing the matter of the transmission of the materials to the White House.
Q So that it's clear your agency was not responsible for any criminal investigation?
A That's correct.
Q In September of 1993; correct?
A And I think that's an important fact in terms of understanding what our agency's responsibility is. If I might characterize it that way. We do not have any criminal enforcement capability. We refer matters to the Department of Justice when we think that there's criminal

88

violations which may have occurred and we made a referral to our Inspector General, for example, in the Hale matter, who, in turn, referred it to the Department of Justice for investigation and eventual prosecution occurred.
It didn't occur out of our referral as a matter of fact. It occurred out of matters which they developed on their own from that ongoing investigation in Arkansas. But we wouldn't ever have any criminal enforcement responsibilities. We would refer the matter to the Department of Justice to enforce it for us. We're a client agency in that regard.
Q Well, would it also be fair to say, then, that if Mr. Hale was making these allegations about being pressured with respect to loans, that that would be something that would not be investigated by your agency but would be investigated by some other agency?
A That's correct. And again, to respond to your question, all I said was that no information which we had would lead me, when asked, would lead me

to conclude that his allegation with respect to being pressured was correct. I did not represent with respect to any other information which may or may not exist elsewhere.

Q And so when you say "no information" you had, are you saying that the only information you had at that point in time were the allegations?

A Well, we had our own information that was obtained over the years from, for example, from the examination of Capital Management Services in the ordinary course of our supervision of that company as an SSBIC. That was a material which we, part of the material which comprised the report to Congressman LaFalce. I was privy to that information. The agency was privy to that information.

None of that information substantiated the allegation that Mr. Hale was making, so, and we had materials which we had developed as a result of our further, in furtherance of our receivership. None of that information substantiated those allegations. That was the material which the agency had in its own possession and that was the material which I was

speaking of.

Q All you had at that point were records of loan transactions?

A We had records of loan transactions and examinations.

Q Right.

A Of the company.

Q Right. But you didn't have at that point interviews of other witnesses?

A Correct. We had no interviews of witnesses. We were not privy to that conversations, to those interviews in the criminal matter except for being made aware that there would be an indictment of Hale. We did not have that type of involvement. We were, again, a client agency making a referral for criminal matter to the Department of Justice and an agency pursuing its economic responsibilities to get back the $3.4 million which we had provided to the company over the course of time.

So we were not involved, per se, in the criminal investigation and that was the mistake that the press was making by inquiring of us. We had no

91

information in that regard that we could supply to them. And I kept repeating that over and over again to inquiries, and it's difficult when matters get confused in the newspapers or in the public's mind that the SBA is pursuing an investigation. We were pursuing no such criminal investigation. That matter was in the hands of the criminal authorities. We were cooperating with them, but that's all we were doing.

Q But isn't it one thing to say you have no information that would -- can you see how if you say that you have no information, that would substantiate that allegation it could be interpreted you as the government as not having?

A I was very careful in my responses to those types of inquiries to say that we're not involved as the prosecutors or as the criminal investigators. And it's an unfortunate fact that even sophisticated individuals in the press who cover these matters do not appreciate that distinction. They tend to lump these things together and at least there are some unfortunate consequences when they do that because

92

SBA gets branded as doing something that it's not responsible for. Or involved in something that it's not involved in.

And I've had that experience in numerous cases over the course of time and it's very hard for the public to draw a distinction between the SBA and the Justice Department. They believe it's all one government and the SBA must be involved, because it's part of the government in the criminal investigation, but we would normally not be involved in a criminal investigation. We aren't involved in criminal investigations.

Q Were you aware of the fact that the FBI was concerned that your statements were misleading to the press?

A No, I'm not aware of that. I was never told that.

Q Were you ever told not to comment with respect to the criminal allegations in the criminal investigation of the case?

A No.

Q Other than the memos that I showed you

earlier today, the August 9th memo, memorandum which you had your signature on?
A Correct.
Q And the September 21st memorandum?
A Correct.
Q Both of those are to Mr. Bowles?
A From Mr. Foren, I believe.
Q From Mr. Foren?
A Correct.
Q Do you know if Mr. Bowles received copies of any other documents related to the Hale matter?
A Not that I'm aware of.
MR. GICALE: Let me just take one moment.
(Pause.)
BY MR. GICALE:
Q So just to clarify this once again. You did not state that certain activities you were asked about by the press were not criminal in nature. You said your agency did not have information with respect to criminal activities?
A I would have to have specifics. I mean, the question is difficult for me to follow, if you

don't mind restating the question.
Q Well, were you asked by the press in September of 1993 whether certain activities, and the allegations of Hale, were criminal in nature?
A The activities of Hale were criminal in nature?
Q No, the allegations of Hale.
A Allegations of Hale criminal in nature?
Q Yes.
A I don't recall that inquiry.
Q Do you recall responding to press, the press that any activities that they were inquiring about, that certain activities that they were inquiring about were not criminal in nature?
A "Certain activities that they were inquiring about," you'd have to be specific.
Q Well, activities that they were inquiring about were not criminal in nature?
MR. IVEY: I think there's a repeated concern expressed by the witness that the question is just too vague to answer.
THE WITNESS: It's not susceptible to an

95

answer. I had numerous inquiries from the press at that time, and I can't respond to any further than that.

BY MR. GICALE:

Q Were there requests, were they asking you opinions on whether certain, on whether actions that were being alleged were criminal in nature?

A Alleged by?

Q Mr. Hale.

A And those actions were what?

Q The allegations against Mr. Clinton.

A They were not criminal in nature because there was no proof of those allegations. I mean, I may have responded that there was no proof of those allegations. I don't recall specifically the questions in that regard nor the answer.

Q Did you say there was no proof or did you say that the SBA had nothing other than the statements and its records?

A I'm sure I responded that, based on the information in our records, there was no authenticity to what Mr. Hale was alleging in that regard, in

96

regard to the President. I'm sure I made that response.

Q Well, how could you have made a determination as to whether there was authenticity if other people, for instance, weren't interviewed who may have been present for these conversations?

A I premised it explicitly on information that we had available to us. All my responses to the press were premised on information that we had available to us. I certainly would not speak in terms of information that I had no knowledge of. I only talked in terms of the information which we had, which SBA had, when I responded to the press on all inquiries, whether it was on that subject or any other subject.

Q Well, did you explain to the press that SBA had not interviewed people that may have been parties to conversations?

A On numerous occasions, I explained to the press what our role was, that we're not investigators, that we have no criminal investigatory responsibility in this matter beyond cooperating with

the investigators. We conducted no such interviews. I believe -- believe me, I attempted to cut these inquiries off because we had no ability to respond based on information that might be in the hands of other people. I could only respond on SBA information and that's all I did.

It was not something that I enjoyed doing, entertaining questions about information and repeated questions about information which I had no specific knowledge of. All I said was, all I talked about was what SBA had and what SBA's position on that information was. I could not speak to anything else.

MR. GICALE: I have nothing further at this point -- just one minute. Off the record.

(Discussion off the record.)

BY MR. GICALE:

Q With respect to these media contacts, did you coordinate these with your press office?

A Yes.

Q Or they left it up to you at this point?

A I coordinated with the press office. They would refer calls to me. I would let them know who

had called and what the responses were.

Q Did they assist you in preparing responses to the press?

A Not beyond the most fundamental assistance. They viewed it primarily as a legal matter, the nature of the inquiries and so they were only too happy to have me do the responding.

Q Did they indicate to you that they had been consulting with people at the White House about how this matter should be responded to?

A No, not at all.

Q And you never had any contacts with the White House; correct?

A That's correct.

Q And you're not aware of your agency having any contacts with the White House with respect to --

A To the media?

Q To the media.

A Not that I'm -- in this regard, not that I'm aware of, no.

Q What do you mean, "in this regard"?

A The premise for the request for

99

Mr. Eggleston, I believe, for the documentation was to, initially on I became aware of that after, and the aftereffect was to respond to media inquiries, but that's the only connection that I'm aware of with the White House with respect to the "media" in this case. There was no attempt to influence my responses to the press from the White House nor from our own office of public communications.

Q Who was it that designated you as the person to respond to the press inquiries on this?

A I believe, and it's hard for me to recall, that it was the head of the office of public communications who did that.

Q Who was that?

A Can we go off the record for a second?

(Discussion of the record.)

THE WITNESS: Janis, J-a-n-i-s, Kearney K-e-a-r-n-e-y, I believe is the spelling.

BY MR. GICALE:

Q Okay. And how was it that she designated you as the spokesperson on this issue?

A On a very informal basis, will you handle

100

these inquiries since they are of a primarily legal nature, and I said yes.

Q Now, did you discuss your designation to handle these matters with Messrs. Spotila and Bowles?

A Not that I can recall. It would have only -- there would have been general knowledge within the agency that I was the poor, unfortunate soul that was designated to handle the press inquiries and perhaps they would have known under those circumstances but not on a formal basis at all. Everyone was referring the press to me at that point.

MR. GICALE: I have nothing further.

(Recess.)

EXAMINATION

BY MR. IVEY:

Q Good afternoon. My name is Glenn Ivey. I'm going to ask you some follow-up questions along the lines of Mr. Gicale's line of inquiry. I wanted to start with the media issues that Mr. Gicale inquired about. I've got a document here. Its Bates stamp number, OIC 1030. It is a memorandum from

101

Steve Irons, who is an FBI agent, I believe, in Little Rock back in the '93 era to the SAC in Little Rock. It's dated 10/1/93. In particular, the second paragraph of that "writer mentioned the media reports of SBA spokesman Techler's," T-e-c-h-l-e-r, "comments concerning the case and noted Teckler was not helping matters by stating certain activities were not criminal in nature when he did not have all of the facts. Seay advised she had spoken to SBA in Washington (possibly Mark Stephens), and understood officials from the White House had urged SBA to make such a characterization due to the mention of Whitewater development in some news accounts and White House desire to avoid any inference that criminal activity could have occurred in relation to Whitewater development and Hale's company."

Now, did you receive any instructions at all from the White House or anyone else for that matter to characterize activities with respect to SBA and CMS in any particular way?

A No, I did not.

Q Were you aware of or did anybody relay any

102

White House desire to avoid any inference of criminal activity that could have occurred in relation to Whitewater Development and Hale's company?

A No.

Q Do you know Steve Irons?

A No.

Q Do you know what article he's referring to or what interview he might have been referring to?

A I can't tell from that memorandum.

Q Now, I think you testified a moment ago with respect to the issue of discussing whether matters were criminal in nature or not, it's difficult for you to do that in the absence of any type of specific direction as to what the allegation may have been?

A That's correct.

Q But is it fair to say that you didn't make any attempts to mislead the media in responding to their inquiries?

A Yes, I attempted to be as truthful and straightforward as I possibly could be with the media.

103

Q And did you make clear in speaking with the media representatives who were inquiring about criminal matters that SBA was not involved in any type of criminal investigation?

A Yes, I attempted to do so in every case for the sake of clarity.

Q And to the extent that you did give answers to the media with respect to CMS, were those answers based entirely on information within the possession of the SBA that was in your knowledge?

A Yes.

Q And did you make that clear to the media?

A Yes, I did. I tried very explicitly to let the media know that it was based exclusively on SBA information and all my responses were based only on information which I knew of, not built on speculation and not on information which I had no knowledge of.

Q And would it also be fair to say that the SBA had a significant amount of information with respect to CMS?

A Yes, we had all of CMS records at our disposal. We had all of the past reports which CMS

104

had filed since it became an SSBIC in 1979. We had examination reports at our disposal for every year that CMS was examined, and I believe they were examined every year since 1979 from the time that they became an SSBIC to the time that they were placed in receivership by our own personnel, examined by our own personnel. So we had all that documentation at our disposal but we --

Q It's sort of a broad estimate of the volume of that documentation would be thousands of pages, tens of thousands?

A Not tens of thousands, thousands would probably be accurate. Again, I'm not the person who prepared the documents. I believe Mark Stephens could probably give you an exact number of pages, but I think my understanding of it is an approximate number would be in the thousands range. Documents, pieces of paper.

Q You also were asked here today a number of questions about Mr. Hale's allegations with respect to Mr. Clinton, and I believe that you said that you informed the media that based on the information

you'd seen within the SBA that you hadn't seen anything to substantiate those allegations?

A Yes, I did, and I was very careful to say, based on information which I had seen, I had nothing which would substantiate those allegations. The SBA had nothing which would substantiate those allegations.

Q And did you also say that to the media?

A Yes, to the media, those were my responses.

Q Okay. And by that, I mean that you told them that based on the information that you were aware of in the SBA?

A Correct.

Q And you testified, we called it as we saw it, we called it straight. And by that I take it you tried to give honest answers to the media?

A Yes.

Q You didn't try to mislead the media in any way?

A Not at all.

Q That there was no pressure on you from the White House or any other source to mislead the media

or steer them any direction which would have been incorrect?

A Not at all.

Q And that you simply just tried to tell the truth and give them the facts as you knew them?

A Yes.

Q You said you also, you'd handled media contacts in other situations. Did you handle media inquiries for the WEDTECH case?

A I don't think so. I may have had one or two contacts at that time. That's not an area, the program area out of which the WEDTECH case arose was not an area of my direct responsibility. I was not, thankfully, involved in any of the decisionmaking that surrounded that case. It's -- I do not have any specific recollection although it's possible if someone searched media statements about WEDTECH that my name as a spokesperson could have -- could arise. I just don't recall it. That was a long time ago. But I was a deputy general counsel at that time so it's in that context it's possible, but it's very unlikely in my estimation that I had any direct

involvement with the media in WEDTECH.
Q Okay. But you had handled media inquiries in other cases?
A Oh, yes, yes.
Q And I take it that there is nothing unusual about that?
A No. No, in fact, it happened more than I wished it would.
Q So for cases similar to the CMS case in which there were significant or perhaps complex legal issues involved and perhaps some movement in the legal processes such as receivership, that the agency communications and general counsel's office all thought that it would be appropriate to have someone with a legal background responding to press inquiries?
A Often. Often. I can give you examples or an example or two if you wish, but that was, it's general, from administration to administration it's generally been the practice when there is legal implications to have media responded to by the general counsel's office.

Q I'm sorry?
A Go ahead.
Q So that would have been true during the Republican administration as well?
A Yes, it was. There was an inquiry in the Bush Administration about the President's son being involved in an SBIC in the Silverado banking scandal and we were the appointed office for purposes of responding to media inquiries in that regard. With WEDTECH, I'm sure people in our office responded on legal implications, if it wasn't me. People with knowledge of the case would have been appointed to respond.
I'm just basically telling you what normal procedure is without any specificity as to who or what, because I don't know it for a fact. But that is the normal procedure, from time to time, administration to administration, when there are complex legal issues. We are responding now on the Adarand case on behalf of the agency, where the programs are affected but -- the Supreme Court case which has affected our programs. We're thought to be

in the best position to respond to questions on that.

We've got any number of cases where we've denied eligibility for loans that have been publicized over the course of time where the reasons are regulatory in nature for the denial of eligibility but because there are regulations involved and interpretations of regulation, the general counsel's office is the office which makes the response to the media, which the media calls and says why did SBA deny this person assistance.

So it's not uncommon and I don't mean to overplay the response to the question, but it's surprising that one would characterize the general counsel's office's involvement in the case as inappropriate in any way to me in terms of responding to the media. After all, it was a legal matter.

Q I can certainly understand your view, and you may recognize as well that, you know, an investigator with the FBI might see things in a different way than the SBA might?

A I do. And I've had a lot of experience

with investigators from the FBI before in other cases where we've had criminal involvements in SBA programs and I'm aware that things, memoranda, in the context of a general investigation produced by one individual may not even reflect the position of the Justice Department or the FBI. It's just one person's memorandum. I am surprised that that memorandum which you showed me exists basically, but --

Q Well, certainly no one from the FBI or the Justice Department called and said, you know, Mr. Teckler, could you please stop making certain statements to the press?

A No one called me and I'm surprised by the content of the memorandum. It's the first I've heard of it.

Q Let me go back to May of 1993. That's your recollection, that Mr. Bowles was confirmed sometime in early May of 1993?

A Yes, it's an identifiable fact. I'm just not sure of the specific day, but I was at the confirmation hearing the day before and I recall that it was on a Thursday and that he was actually sworn

111

in on a Friday, if I'm not mistaken.
Q Did you meet Mr. Bowles at the hearing room?
A Only in passing. I had been part of the review of his materials in my normal functions prior to his confirmation from the standpoint of reviewing his financial statements and responses to the questionnaire by the Senate Small Business Committee. So I knew him prior to his confirmation, but at the hearing itself I nodded to him and to his wife in passing and basically wished him well.
Q Okay. So you didn't come to the hearing with him?
A No, not at all.
Q You know that -- did you see his family come with him?
A Yes.
Q And you didn't discuss the referral with Mr. Bowles and by "the referral," I mean with respect to CMS until after he was confirmed?
A Correct. He became the administrator of the agency and it was only after that.

112

Q I'm sorry?
A It was only after the confirmation.
Q Now at the time the referral was sent out, SBA also sent a letter to Mr. Hale notifying him that his case had been referred to the Office of the Inspector General. First of all, were you aware of that?
A I don't recall it. It's not abnormal. It would have been normal procedure to communicate with the licensee and advise the licensee, in this case the SSBIC, that this action had been taken. If that was a letter, I'm surmising it would have been sent by Mr. Foren.
Q So that this was typically done at the time a referral was sent out or roughly at the time a referral was sent out, the licensee would be notified that he was being referred to the Inspector General?
A Yes.
Q Do you know if that's still the practice now?
A I'm not aware that the practice has changed. I'm just not aware of cases since then that

have occurred so I couldn't speak to them.
Q Now, it was about that time -- well, let me ask you about Mr. Bowles's conversation with you about his desire to essentially recuse himself from the case. Now, if I understand your previous testimony, you said that he did not direct the investigation with respect to CMS?
A Did not direct any of the SBA efforts. Again, the "investigation" is probably a misnomer in this regard. I mean, did not direct any of the -- we examine, we don't investigate. Our IG investigates or in this case, referred the matter to the Justice Department for investigation. So you really have to separate those two functions in terms of what SBA would do. He did not direct the SBA's pursuit of its responsibilities from that point forward. He did not involve himself in the case. And that's what I mean by disassociating himself from the case.
Q So he left the strategic decisions with respect to SBA's handling of CMS, he left those decisions to you and Mr. --
A And Mr. Foren and Mr. Stephens and career

people who had been involved in the case prior to his coming on board as he formally would, as any administrator normally would.
Q And is that the essence of what he conveyed to you?
A Yes, just pursue it as you would any other -- appropriately, vigorously and appropriately.
Q Now, is your recollection of that conversation, the discussion with Mr. Bowles about that connected to media inquiries at all, by that I mean did that conversation come in conjunction with media inquiries or quotes in the paper about Hale, Hale's allegations with respect to the administration?
A It was not connected. I mean, there had been some. The great majority of those types of allegations occurred after Hale or at the time Hale was being indicted, Hale's allegations, that is. So there really wasn't the awareness of the argument about the President that I knew of at that point. And I can't say what was in Mr. Bowles's mind at that point.

115

I think there was some, there had been some allegations or some media inquiries about Hale and his being located in Little Rock and so on and so forth. And I think that's what really stimulated the explicit instruction to just go ahead and do what you normally do and pursue it vigorously and pursue it appropriately. But you'd have to ask Mr. Bowles for what he had in mind when he said that.

Q And your recollection would be that this would have, he would have given that direction shortly after coming to --

A Yes.

Q Shortly after his confirmation?

A Yes, to both us and the general counsel's office and to Mr. Foren, although I can't speak for Mr. Foren. He was the head of the program, it was his responsibility to get that money back for the agency as much as it was ours.

Q Now, at about this period or during this period of time, do you know if Mr. Bowles was having conversations with Mr. McLarty at the White House?

A I know of no such conversations myself.

116

Q Did Mr. Foren ever mention any such conversations to you?

A Not that I can recall.

Q What type of relationship did you have with Mr. Foren, did you work fairly closely with him?

A On a daily basis.

Q You saw him daily?

A Again, keeping in mind what my responsibilities are in that office, I was not only acting general counsel at that time but the office that I head, subordinate attorneys, a specific office that I head deals with that program as well as other financial programs. So it's a daily kind of interaction giving advice on this as well as many, many other cases to Mr. Foren when he would inquire for it or we would have an obligation to produce things for him from the standpoint of opinions or reviews of documents or any other of the normal events which would occur with respect to this program.

This was just one case of many, many that were involved with the SBIC program and the SSBIC

117

program at that time although it was a case, became a case of high visibility.

Q And Mr. Stephens worked with Mr. Foren and you --

A Mr. Stephens's responsibility is one of conducting the liquidation. Once an SBIC or an SSBIC is put into a liquidation status, it means that they're no longer an active company and we have decided that, for whatever reason, our investment in that company is at risk and we seek to get the money back under those circumstances and we seek that in a number of ways.

Sometimes there's a receivership instituted in court. Sometimes it's a voluntary liquidation on the part. SBIC. When liquidation occurs, Mr. Stephens's particular office that he heads takes over the responsibility of doing the liquidating, whether it's a receivership or whether it's voluntary or whatever the case, from a legal standpoint. And he coordinates with his counterparts in what was Mr. Foren's office, the Office of the SBIC Program, who are in liquidation to attain that result.

118

Q Is it fair to say that in May of '93, particularly at the time that the case was referred to the Inspector General, would it be fair to say that Mr. Stephens was working fairly closely with Mr. Foren and his staff, as were you?

A Yes, it was becoming clear that it was likely that there would be a liquidation and we were working in that direction, and we came to that conclusion eventually and there was a liquidation of the company.

Q And you and Mr. Stephens were seeing Mr. Foren on virtually a daily basis?

A That would be extreme. A lot, if not daily, often. And keep in mind we have any number of cases in liquidation, so we were seeing Mr. Foren on other things as well and this was not occupying the full attention of either of our offices. This was just one case, but it became a case of high visibility. Occupied more of my time than I wished it would from the standpoint of responding to media eventually and other things, but Mr. Stephens was heavily involved in this case although he was

119

pursuing other cases as well.
Q Okay. So during this period, your recollection is that you didn't hear any type of mention about Mr. Bowles meeting with Mr. McLarty or anyone in the White House?
A No.
Q With respect to this case?
A No.
Q Not from Mr. Foren?
A Not that I recall.
Q Okay. And that would be true for Mr. Stephens and Mr. Shepperson as well?
A I believe but you'd have to ask them.
Q I mean just what you heard?
A Oh, that I've heard from them about this.
Q Right.
A No, I did not. I do not recall any such conversation.
Q Now, at the time that you spoke with Mr. Bowles initially with respect to CMS, would you characterize his knowledge of the CMS case as thorough or less so?

120

A Less than thorough. I can't speak for anybody else in terms of having provided him with any background information on CMS, but we didn't prior to that meeting. I didn't. And I don't think his knowledge was thorough in terms of -- in fact, I don't even think he knew what a receivership would be or he had some familiarity. He was in finance with the SBIC program, but he certainly didn't have an in-depth knowledge of the SSBIC or the SBIC program at that time. He was just confirmed and appointed as administrator of the agency.
Q So he was new to the job, still trying to get a grasp, get his arms around the agency and all the cases and issues that were --
A Yes, and it was in that context that he was advised of this case. You have a new person taking charge of an agency where the career people have been working a case for a period of time in the general counsel, I'm the acting general counsel, it's my obligation to let him know what cases are within the agency which have some sort of visibility. There were some media inquiries. There was a lot more

121

after that point in time. But there were already some media inquiries about this matter emanating from Arkansas. So, you know, it was in that context that he was advised of the case.

Q But he wasn't -- I guess my understanding from what you said so far is that he did not, he was advised generally so that he'd be prepared to address press inquiries, but -- he didn't have a detailed knowledge of what was going on?

A Correct; or address people under his supervision who -- everybody in the agency is under his supervision. He's the head of the agency, to address media inquiries, do their jobs with respect to the case. Other administrators in similar situations became more involved in cases in terms of wanting to know on a minute detail, basis of what was going on with a particular case. In the WEDTECH area, for example.

Administrator Abner, who inherited the case which had already broken under a previous administrator, was very concerned about the media attention being devoted to the case on behalf of the

122

agency, and rightfully so, he's the administrator of the agency. He's responsible for the agency's perception in the public. And it's not uncommon to have people on an administrator's staff inquire what's going on with this case on behalf of the administrator.

Administrator Bowles didn't involve himself past a certain point. I think he sensed a sensitivity about the fact that this was a case where there had been some media concern emanating from Arkansas, from what was going on in Arkansas and the allegations which became more and more prominent as time went on and he sensed that it was not appropriate for a political appointee to be construed as in any way influencing people who were responsible for pursuing the case. So I think he took extraordinary steps in that regard to disassociate himself from that kind of perception.

Q It's interesting that you raised the add -- former Administrator Abner's role in the WEDTECH case. I, just out of curiosity, would it be your view that even though he was involved in the WEDTECH

123

matter that that was not inappropriate?
A Well, I may have misspoken. He was not involved from the standpoint of having involved himself in what became the controversy of the WEDTECH matter. It broke prior to his becoming administrator, but he was heavily concerned with the media coverage and the Congressional inquiries with respect to WEDTECH which ensued. My recollection is that our general counsel at that time was called before the Senate Government Operations Committee to defend what the agency did with WEDTECH, for example. And Administrator Abner was very concerned with that.
MR. GICALE: Unless it relates, I would object at this point.
THE WITNESS: It's just an example of how other administrators perceived their responsibilities and I was just giving it as an example.
BY MR. IVEY:
Q Yeah, I guess the objection is on the record so let me state the reason I raised it on the record. I mean, we're essentially laying out

124

standards of conduct by which Administrator Bowles or former Administrator Bowles would be judged in the way he handled a variety of things, and I think this deposition is several others that we've done have made that crystal clear. Recusal, the gaining of information with respect to press and media inquiries and whether that's appropriate or not. Have certainly been matters in this deposition and others.
And if we are going to judge him based on his role in those activities, I think there needs to be a standard of judgment for that. I don't think it's necessarily unfair to look at the way other administrators have handled it particularly since it was, you know, an example raised by this witness.
But in any event --
MR. GICALE: Just to finish, just -- my position on the objection is just that other than going into the standards and I think the witness has testified he did offer that as a comparison in terms of information. And I think that that is in the record. My objection was to going into further

125

detail about that case because I think it's beyond the scope of what we're getting into. For the purpose of saying it was a standard in comparing it, you know, that's one thing, but to go beyond that, I think we started to get a little far afield.

THE WITNESS: I'll try to restrain myself to answer the questions.

MR. IVEY: No, I thought your answer was perfectly appropriate for the reasons I stated. I do think it was a fair statement of showing a comparison for Mr. Bowles's behavior and other administrators' behavior under similar circumstances in high profile cases that had political implications.

That means I can't go into Silverado, right, Lou?

MR. GICALE: You want to compare standards, go ahead, ask him about standards, I just don't think we should get too far afield.

(Pause.)

MR. GICALE: Just for the record, the witness did mention the Silverado case as well.

THE WITNESS: Can we go off the record for

126

a second?

(Discussion of the record.)

BY MR. IVEY:

Q Now, with respect to the recusal of Mr. Bowles, you were asked some questions about the August 9 memo from Mr. Foren to Mr. Bowles. I guess the implication being that these contained information that would not have been appropriate for someone who had recused himself from the matter.

Now, the August 9 memo, if I understand it correctly, dealt with the matter of receivership with respect to CMS?

A May I review the memo again?

Q Certainly.

(Witness reviewed the document.)

Q So let me rephrase the question. What's your understanding of what the August 9 memo deals with generally?

A Well, it was a status of the case at that time and it was that we were moving rapidly toward placing the company in receivership and at that point, I can't put what Mr. Foren might have been

127

thinking into words. And it's hard for me to recall explicitly what I was thinking, but I would think that I was thinking, by countersigning that memo, which I did, that it was a status report and that we were about to have, we were about to, based on information which we had discovered over the course of the summer, take action to place Capital Management into liquidation and receivership.

Q Now, by August 9, would it be fair to say that CMS had become a source of media interest?

A Yes.

Q And would placing CMS in a receivership have been a major event that was likely to trigger even more media inquiries?

A Yes, and in fact it did.

Q Now, so would it have been important, in your view, for the administrator to have some idea that that type of a major event was forthcoming so that in the event that he did receive media inquiries, he would be able to at least provide some sort of response to the media?

A Absolutely. This is the placing of Capital

128

Management into receivership and the indictment of Mr. Hale in a short period of time, almost consistent with each other, triggered a tremendous amount of media inquiry. It's eventually what triggered the inquiry from Chairman LaFalce, who was chairman of our oversight committee. It was, for those of us who were working this case, who had worked similar cases in the past, not necessarily in this program but in other programs, what would ensue was known at that point. It was inevitable that these things would happen.

So I think, again, it's impossible for me to say what Mr. Foren was thinking and to go back and place myself in August of 1993 is impossible as well, but I've got to say at this point that we were advising him that this was going to happen so that he would know that this was going to happen and the agency, the whole agency would be properly prepared. He was the head of the agency. This was not something where we were soliciting his advice or consent. This was something where we were advising him of what was going to happen.

129

Q And is it fair to say that after he received the August 9 memo, neither you nor Mr. Stephens received any direction from Mr. Bowles with respect to the direction of the agency's strategy with respect to CMS?
A Correct.
Q There was no attempt to impede or influence your activities whatsoever?
A Not that I'm aware of at all.
Q Now, take a look at the September 21 memo?
A Can we go off the record for a second.
MR. IVEY: Certainly.
(Discussion of the record.)
BY MR. IVEY:
Q I'm sorry. Before we go to September 21, let me ask you about the August 9 memo and the version that we've been given, there's a draft indictment attached to it. I cannot represent that that was attached to the actual memo, but did you have any sense at the time of the memo, August 9, 1993 that an indictment of Mr. Hale was a possibility?

130

A Again, it's impossible for me to place myself back to that point in time, but knowing what I know now and knowing what I knew then, I knew that we had received a copy of a draft indictment which had been furnished to Mr. Hale by the U.S. Attorney's office I believe in Little Rock, and we were certain at that point that he would be indicted. They were trying to negotiate -- he was trying to negotiate through his attorney with the law enforcement authorities over the content of the indictment and we were aware of that.
And so we knew that there would be media inquiries about his indictment since the indictment centered on SBA's programs. Again, there was a need for the agency as an institution to know what was going to happen, the head of an agency to know what was going to happen with the agency's programs and someone who was going to be indicted for violating the law with respect to the agency's programs so I believe that was why that memorandum was drafted.
MR. GICALE: Off the record.
(Discussion of the record.)

131

BY MR. IVEY:
Q And just for the record, we were looking at Exhibit Teckler 1, which is essentially a compilation of documents from Wayne Foren, and within that compilation we were referring to an August 9 memo from Mr. Foren to Mr. Bowles within the Foren compilation that is Exhibit O, and now I want to go to Exhibit P within the Foren compilation. A September 21 memo from Mr. Foren to Mr. Bowles. I'd ask you to take a look at that, Mr. Teckler.
(Witness reviewed the document.)
Let me ask you the same questions essentially that I asked about the August 9 memo. After this memo went to Mr. Bowles, did you receive any types of instructions from Mr. Bowles or anyone else in the agency to change the course of your activities, to delay your activities, was there any attempt to impede your activities whatsoever?
A None whatsoever.
Q And this September 21 memo I believe addresses the forthcoming indictment of Mr. Hale?
A It primarily addresses the receivership

132

having occurred and our expectation that there would be an indictment and, again, I believe that to be in the nature of a status report. I received a copy of it, but I didn't countersign that one that I'm aware of. It doesn't indicate on the copy that you have.
Q Okay. Well, the receivership issue was already public information at that point?
A Correct.
Q That would have been completed by filing documents?
A Correct, I believe.
Q In a court?
A That happened on September 15th, if I'm not mistaken.
Q So this doesn't contain, that part of it doesn't contain any information that wasn't within the public domain?
A No, just in context, it's just a status report.
Q And the forthcoming indictment, paragraph -- I guess that's a paragraph down here at the bottom of the first page of this exhibit refers

133

to an indictment that was actually obtained I believe two days after this memo is dated, September 23rd, 1993?

A That would be about right.

Q And would that have also been considered a major event that might have triggered additional press inquiries?

A We were already receiving media inquiries. Hale, my understanding is and I don't know this for a fact myself, was leaking information to the press at that -- prior to that point, the point of the preparation of that memo. And we were receiving inquiries about the information at that point. There was an expectation that once he was indicted, we would receive even more inquiries. Again, keep in mind the indictment was based on violation of statutes that are relevant to SBA so we were the aggrieved party of his criminal behavior at that point or his alleged criminal behavior, I should say.

Q Now, to the best of your knowledge -- well, did you provide any additional details beyond these two memoranda to Mr. Bowles?

134

A Not that I recall.

Q And did you feel it was appropriate that he at least have sufficient information to be aware of the status of the investigation?

A Yes. Again, the word "investigation" is probably inappropriate in this context and I don't mean to correct you.

Q Well, it's a fair correction and I guess --

A Status of our position in the matter is probably more accurate.

Q My time as a prosecutor is betraying me here. I apologize. With respect to the CMS case, your handling of that case?

A Correct.

Q Now, with respect to the inquiry from Congressman LaFalce with respect to CMS, that occurred somewhere around on or about November 4, 1993?

A The letter was dated -- I believe the letter of inquiry was dated November 4th.

Q Was there ever any question in your mind that it would be inappropriate to respond to

135

Congressman LaFalce, then Chairman LaFalce's inquiry by providing the report he requested as well as documents from the files of the SBA?

A No.

Q And why is that?

A He was the chairman of our oversight committee. The chairman of our oversight committee has, by virtue of the Small Business Act and also by virtue of his charter, the right to obtain information from the agency of this nature upon request. And we respond accordingly as a matter of course under our procedures. And so I had no doubt that he was entitled to the information.

Q Did you also, not just in this case but in other cases, did you provide information to Congressional committees?

A We will provide, as we have in this case, upon appropriate request generally from the chairperson of a committee a report of this nature on any subject matter that the committee might be inquiring which is within our jurisdiction.

Q Now, the privacy legend that was at the top

136

of that November 15 report that SBA sent back to Congressman LaFalce, is it your testimony that that's routinely put on documents that are sent to Congress?

A It is routine. The concern is that the material was solicited by the chairperson for the committee's purposes in this case, and that it be kept in confidence and not disseminated outside of the jurisdiction of the committee. So we put the legend on to remind the recipient of the information of that responsibility.

Q So it's your understanding then that sending this type of documentation to a Congressional committee is not a violation of confidentiality that that legend is intended to address. It would be a concern about further dissemination outside the committee?

A That is correct.

Q Now the list of attachments that was connected with that document production for Congressman LaFalce, did you say that you'd had a chance to look at that at all?

A Subsequent, not prior to the submission.

137

Q Subsequently, you'd seen it?
A Correct.
Q And that you'd had a chance to look at the materials that were provided to Congressman LaFalce?
A Yes, in a general sense, not page by page, but certainly was aware of the nature of the materials that were provided.
Q And these were the same materials that were provided to Mr. Eggleston at the White House?
A That's my understanding.
Q And it was your understanding that sending those materials did not violate the Privacy Act?
A Sending the materials to --
Q Congress and to the White House.
A Both? Yes.
Q Let me ask you some questions about Mr. Spotila. With respect to this transfer of documents to the White House. Now, it's your recollection that you have not had a specific conversation with Mr. Spotila but that there was a general conversation at some point about when it would be appropriate to send documents to the White

138

House?
A Mr. Spotila, in discussions with me, has maintained that he thought we had a conversation about providing information upon request to the White House, which was another federal agency for purposes of coverage of our procedures on provision of information, and that's the extent of my recollection of what he said. I do not recall a specific conversation with respect to this transmission of documents to Mr. Eggleston prior to the time that the documents were transmitted to Mr. Eggleston. In fact, I was --
Q You were out of town?
A I was out of town, I must say not on the day that the transmission occurred, but I was out of town on the 15th and it's my understanding that the transmission occurred on the 16th. But I was out of town the week before. As a matter of fact, he was with me in Florida and he came back and he was back, I stayed an extra day and came back the 15th to Washington, was in the office the 16th.
Q So your understanding, then, of the

139

conversation with Mr. Spotila was not that he said that he had a stack of documents that he asked you to look at and approve?

A That's correct.

Q But just that he'd had a general conversation with you?

A That's correct. I never reviewed those documents from the standpoint of looking at them before they were submitted to Mr. Eggleston, transmitted to Mr. Eggleston, nor did I sign off on the cover letter or transmission letter from the standpoint of a clearance.

Q And did he mention that his understanding was that the materials that were sent were not particularly sensitive?

A My understanding is, based on subsequent conversations to November 24th, that he inquired of Mark Stephens, who was the person who prepared the materials, as to whether there was any particular sensitivity to that material that would cause them not to be transmitted, and satisfied himself that there wasn't but you'd have to ask him about that

140

conversation. I mean, this is hearsay from me and it's really not fair for me to characterize their conversations, but I understand that to be the case.

Q Is it fair to say, though, that Mr. Stephens participated in preparing the production of documents both for Congress and the White House?

A Well, my understanding is and I believe this to be correct, and again, you'd have to ask Mr. Stephens, but the documents were prepared, copies of the documents were prepared as exhibits for the report to Congressman LaFalce by Mr. Stephens. The same documents -- copies of the same documents were what was submitted to Mr. Eggleston.

So in that sense, Mr. Stephens prepared the material. Now, whether he was -- I don't believe that he was asked but you'd have to ask him, to prepare the materials for Mr. Eggleston. It would not be fair to say that. But the same materials were given to Mr. Eggleston. So it is fair to say that he prepared those materials in that sense.

Q And do you know if the Justice Department was ever contacted by Mr. Stephens with respect to

141

the issue of this transfer of documents?
A Yes, I learned about that subsequently as well on November 24th and it's my understanding from that conversation and from subsequent conversations, in fact, it recently appeared in The Washington Times that Mr. Stephens consulted with Mr. Carver of the Justice Department with whom he had had an independent contact on related matters. But not on this document production as to whether it was appropriate from the Justice Department perspective and the Justice Department got back to -- and I don't know who Mr. Carver may have spoken to within the Justice Department, if at all, and Mr. Carver got back to Mr. Stephens and requested that Mr. Stephens ask Mr. -- requested that SBA, and it turned out to be through Stephens, requested Mr. Eggleston to return the materials.
Q Okay. So you saw the article in The Washington Times?
A Right.
Q Which I guess was from Sunday. Is that the source of that information or --

142

A No, I knew that, I knew those purported facts or that chronology before the article appeared in The Washington Times, which I believe was Monday of this week.
Q Now, so did you ever discuss with Mr. Spotila, generally speaking, the submission of documents to the White House or Congress?
A Well, in general, I would have briefed Mr. Spotila on procedures for transmittal of documents, when requested, in our general counsel's office's involvement in those procedures, not with respect to these particular documents however, that I can recall at all.
Q Let me ask you this --
A Prior to the submission of the documents to Mr. Eggleston.
Q Okay. Let me just set aside any specific conversation with respect to Mr. Spotila about these documents prior to the time that they were sent because you made it clear that you don't recall anything like that. Is that fair to say?
A Yes.

143

Q Okay. When Mr. Spotila came to the SBA, was there any type of orientation for him?
A Oh sure, we would have gone over everything that the office does, he's the general counsel, after all. He's the head of the office. I had numerous conversations with him on various facets of our responsibilities and on a daily basis would have conversations with him on particular things which came to his attention which he didn't understand, which I might understand, regardless of program. And I would either answer them or steer him to the person who could answer them for him in our office or elsewhere within the agency.
That's my job to do that for any new general counsel and I think I've served under nine general counsels since I've been deputy general counsel. So it's not uncommon at all to have general conversations on subject matter.
Q Do you recall giving him any guidance, again, not with respect to this particular group of documents but generally speaking, with respect to the propriety or process for providing documents to

144

Congress or the White House during that first two-month period?
A It's hard for me to recall a specific conversation, but it's not unlikely that we generally discussed it, especially in view of the fact that we were sending the report to Congressman LaFalce which we had already sent to Congressman LaFalce when the Eggleston request came in. There is, as you can see, there is a general counsel office involvement in these things regardless of the requester and in this particular case, we were preparing the report or intimately involved in preparing the report.
The program people were also somewhat involved but Mark Stephens was the person who actually compiled the exhibits and numbered them, for example. So it's quite possible that we had a general conversation about the LaFalce report, inquiries from other federal agencies, inquiries from the White House in general. I do not recall any specific, as I said, conversation with respect to the particular Eggleston request, however.
Q Now, is it fair to say that Mr. Spotila was

145

essentially new to the job as general counsel at the time of this document transfer to the White House?
A Yes.
Q And is it fair to say that he was not intimately familiar with the contents of the documents that were provided to the White House?
A Yes.
Q And do you know if he had a clear understanding at the time the documents were sent of how these documents might connect to Hale's allegations against Mr. Clinton?
A It's very hard for me to say what understanding he might have had. He was two months on the job. He had not had the experience of developing the case that I had. I had been the acting general counsel when the Hale matter arose and as it proceeded through the course of that summer. So I was much more familiar with it than he was in that regard, as a qualitative judgment as to whether he would have related the documents which were requested to being sensitive or not sensitive vis-a-vis the Hale matter and the allegations, I

146

think was your question, which were being made.
He satisfied himself on conversations with Mr. Stephens that it was not, they were not extraordinary materials which could not be disclosed and that they were not sensitive with regard to impeding our ability to pursue the receivership or impeding what Mr. Stephens knew of the investigations which were on going.
Q Would it also be fair to say that Mr. Spotila was primarily a civil attorney in his previous incarnation?
A I believe that's correct. I believe that's correct.
Q And that may be he didn't have a full grasp of the nuances of criminal investigations?
A That's possible. I believe that's probably correct. He did not have the experience in the job as general counsel at that point which would give him insight that perhaps I had into sensitivity or of material relative to a particular case, but he satisfied himself and correctly so, that it was not impermissible to make that material available and the

147

material was made available.
Q Now, you were interviewed by the Department of Justice and the FBI, I believe you said on November 24th, 199 --
A It wasn't an interview so much as it was a general conversation just to put it in context and I don't want to make a long answer out of this but I think it's important. We were scheduled for a visit by Mr. Mackay who had been appointed very recently to pursue the "Whitewater matter" for background information. And Mark Stephens had scheduled a discussion with him for that date and at that time in our offices to review the program and to review documents that related to Capital Management, so that Mr. Mackay could judge whether any of that information was going to be useful to him in pursuing his responsibilities. I was not supposed to be in that meeting, per se. I was available as a background source if they needed me but it was mainly something that Mark Stephens had set up with Mr. Mackay.
My understanding is that when Mr. Mackay

148

arrived, he was more interested in knowing about the transmission of the documents to start with than pursuing -- than proceeding with what had originally been scheduled in terms of background information and at that point, Mark Stephens came into my office and asked me to step into the conference room and I did and Mr. Spotila came into the conference room. Keep in mind I'm the deputy general counsel, Mr. Spotila, and the general counsel, and Mark Stephens was our subordinate and he thought this was a matter of some sensitivity based on what Mr. Mackay was asking him and he wanted to make sure that we knew of it so we came in at that point.
It wasn't an interview so much as a general discussion of what had taken place. My recollection is I didn't do much talking in that meeting and that Mark Stephens and Mr. Spotila did most of the discussing because Mr. Spotila had produced the documents for Mr. Eggleston and Mark had been the one who had prepared the documents, and the questions focused on what were the documents and how were they transmitted and what was the nature of the inquiry

149

that Mr. Eggleston had made to Mr. Spotila.

Q So part of this meeting then or part of Mr. Mackay's inquiry was the content of the documents, what documents were sent to the White House and what information they may have contained?

A That's correct, and, again, without a transcript of the meeting or a memorandum of the meeting, I don't know whether you have one or not, it's hard for me to remember, but I do recall he was interested in knowing was this clearly material which was of a nature which should be kept from third parties and we said it was not sensitive material. It was information that had already been provided to Chairman LaFalce and, in fact, some of the information, not in the form of a report, but some of the contents of some of the exhibits had already been made available to media inquiries and requests and we spoke to him about that.

I should go back. Part of the reason that Mr. Stephens sensed that Mr. Spotila and I should be in the meeting was Mr. Mackay brought an FBI agent

150

with him, Agent Gillis and so we responded to Mr. Mackay's inquiries at that point and said it was produced in the normal fashion and, in fact, under our procedures, another agency of government, and the White House is another agency of government for that purpose, could ask for information of this nature from the agency.

The agency would make a determination as to how it should be produced and produce it upon a reasonable request and my understanding -- an appropriate request and my understanding in this case was that the request was for purposes of responding to press inquiries on the fact that we had made a report known to or made a report available to Congressman LaFalce, and that the White House representatives had seen an article in the paper which so stated and so.

And so they wanted to know, to be prepared to respond to press inquiries and that is something which was deemed by Mr. Spotila under our procedures to be a legitimate request and so he produced the documents in that context and that's what we

151

discussed with Mr. Mackay that day.
Q So I take it, then, recognizing this was almost two years ago to the day, so you know your memory is not going to be perfect obviously but generally speaking, is it fair to say that your sense was that at the time of this meeting, Mr. Mackay did not know what was in the documents that had been given to the White House?
A Yes.
Q So at the time that Mr. Stephens was asked to retrieve the documents, there would not have been a knowledge on the part of the Justice Department apparently as to what the contents of those documents were?
A I believe that's correct.
Q Is it fair to say that they were mostly concerned with the appearance of providing documents to the White House?
A I'm not sure what their concern was. It was never related directly to me. I believe that might have been of concern. Subsequent to that time, Mr. Stephens mentioned to me that Mr. Carver

152

mentioned the fact that there was a confidential statement placed on the report and therefore should be confidential, and that that might have been the reason why he requested that they be retrieved from the White House.
The fact of the matter is that that confidential statement is a routine statement which was placed on similar reports and does not mean that the same report could not be disseminated to a proper appropriate requester, but I don't know what was the reason for requesting us to get the documents back, if you will.
(Discussion of the record.)
BY MR. IVEY:
Q Now, you testified earlier that you would like to think that you would have raised concerns about the appearances of this document transfer to the White House. Is it fair to say that, you know, without the benefit of hindsight, that this might not have been an issue that jumped out at a relatively new general counsel who was simply making an attempt to meet a request by the White House to receive the

153

same documents that had been provided to Congress?
A Yes.
Q Would it also be fair to say that despite the appearances issue, that the documents that were provided to the White House did not contain sensitive information?
A I think Mr. Spotila satisfied himself to that fact in a conversation with Mr. Stephens before he transmitted. He did do that; I know he said to me that he did and Mr. Stephens said to me that he did.
Q And in a review that you conducted subsequently, you satisfied yourself that there were no violations of the Privacy Act?
A Yes, I would agree to that.
Q And were there any consequences with respect to the way you handled the CMS case to the White House having received these documents, in other words, after the White House got these documents, were there any calls from the White House to you or Mr. Stephens or anyone at the SBA to change the course of your activities or the way you were

154

pursuing the CMS case?
A None that I'm aware of at all. Keep in mind we had already placed Capital Management in liquidation, receivership. We were proceeding to fulfill our responsibilities to collect the money as best we could at that point and we were cooperating with the law enforcement activities which were pursuing other matters relative to Mr. Hale, for example. He pled guilty subsequent to the indictment.
Others were indicted based on information which we provided to law enforcement, partially, at least partially to the law enforcement activities. And so there was no change in the course of what we were doing that occurred subsequent to this incident.
Q Shortly after this incident took place, Mr. Spotila recused himself from this matter?
A Informally. He said if he hadn't before, that this situation had convinced him that we should take every precaution not to have him involved in anything related to this case in any kind of a formal

155

sense. I'm sure that we mentioned from time to time to him as the general counsel, head of the agency, that Mark Stephens was going to Little Rock to conduct legal proceedings pursuant to the receivership.

So we didn't keep him out of that loop in terms of a recusal, but there was no need to do that. We were, we pursued our responsibilities subsequent without any involvement from him in the sense of giving direction to what we were doing or having to get his approval for taking actions or having him involved in any inquiries from the media or from third parties of any nature.

So to say that he's recused in the formal sense of not having any contact whatever with anybody who has anything to do with the case, I couldn't say that. In fairness, I couldn't say that because he does know generally what we're doing. He's responsible for our office, but he's not involving himself in decisionmaking, hasn't involved himself in decisionmaking, oversight of strategy, execution of positions in this case since that time.

156

Q In your experience, was that consistent with the way recusals had typically been handled at SBA?

A Yes, recusal -- I do happen to be the designated agency ethics officer and recusals from individual cases, from individual matters are generally because an individual may have a financial relationship to a matter. 99 percent of the experiences I've had, it's because a person recuses himself or herself because he or she has an interest in the -- financial interest either direct or indirect in a matter that comes before the office that that person has responsibility for or a case that that person is responsible for.

This is a peculiar situation for recusal from a standpoint of allegations having been made against the White House or against the President by a criminal defendant who happens to have run an SBIC that we have supervisory responsibility for because it's the program that we run. So it's the height of caution to recuse oneself, to not to give the appearance that they're influencing, because they're

157

political appointees, the execution of the agency's responsibilities with respect to this type of case. I can understand from the standpoint of not wanting to know information so that there would be an appearance that the individual was in a position to pass information improperly to somebody, for example, but that never took place to my knowledge and never would take place.

So the recusals for those reasons as opposed to the normal reason, which is because there is some sort of a financial interest in the subject matter. And both Mr. Spotila and Mr. Bowles were highly sensitive, especially after Mr. Spotila, especially after this incident occurred, to being disassociated from the case because it had been handled by career civil servants prior to Mr. Spotila arriving and he wanted to make sure that it continued to be handled in the way it was being handled and without his involvement.

Q So would it be fair to say, then, that Mr. Bowles's written recusal is atypical, sort of unusual?

158

A It was a formality and I think it arose, and you'll have to ask him why he did it, but I think it arose because of the intense publicity which was being generated out of this case relative to White House, "White House connections" and his being a presidential appointee as the head of SBA.

Q Without going into why he did it. In this type of case, political, high-visibility cases?

A Mr. Abner didn't recuse himself. Again, to use that example, didn't see a need to recuse himself nor would I see the need to recuse himself from the WEDTECH case because they don't become involved in it, in a case on a day-to-day basis. Do they need to know the status of a case in general? Yes, they need to know, the administrator needs to know the status of a case in general within his agency because of press inquiries or inquiries from the oversight committees, but they generally don't become involved on a day-to-day basis in any of these cases, and Mr. Bowles didn't in this case and Mr. Abner didn't become involved in decisionmaking in WEDTECH.

He was only highly concerned with the media

159

inquiries about WEDTECH and what the image of the agency would be as portrayed in the media for having been associated with the WEDTECH scandal.

Q You mentioned Silverado as well. Were these WEDTECH, Silverado and CMS, I mean, were the recusals handled in essentially the same way?

A There were no formal recusals by anybody in those other two cases. This was the, this is the height of formality, the height of caution. You've got a political appointee as the general counsel in the time of Silverado or the Neil Bush case and he didn't recuse himself from involvement because he happened to come in with a Republican administration. He was the general counsel of the agency, and he did not improperly involve himself in the case. In my estimation, he did what was appropriate and normal and let his staff do what was appropriate and normal in pursuit of that case.

Q You testified about the importance of providing the administrator with some degree of information with respect to CMS so that there would be an ability to respond to press inquiries,

160

potentially Congressional inquiries. Do you feel that it would have been appropriate for SBA to provide information to the White House for similar reasons?

A To respond to press inquiries, yes. That's part of our, that's within our normal standard operating procedure. Again, you have to make sure of both the actual legality of whatever information is being provided in any case to any third party, whether it's the White House or whether it's the Freedom of Information Act request from a newspaper, whether it's legally permissible to provide whatever it is that they're asking for as well as satisfying yourself to appearances questions, I think, in this particular case, and I've talked about that in response to the questions.

I'd like to think that I might have given some advice with respect to the appearances to the legality, I think Mr. Spotila satisfied himself in that regard of the provision of those documents and it was appropriate under our normal procedures.

Q Well, even with respect to appearances, I

mean, is it fair to say that there's -- this isn't necessarily a bright-line issue where it was just outrageous, but that there were bounds, there were interests on the other end of the scale?

A Yes, they had a legitimate concern about press inquiries because there was at least one newspaper article that I was aware of that came out I believe of Mr. LaFalce's office saying that he had requested, I believe it was November 12th in The Post, Washington Post that he had requested the report. And I believe that's what triggered the White House inquiry about the report to Mr. Spotila. Actually, the inquiry came into the agency and it was referred to Mr. Spotila.

Q What about the other major events with respect to CMS, there was the receivership issue and the indictment of Mr. Hale?

Do you think, since those were then also major sources of media interest, that it would have been appropriate for SBA to advise the White House of those matters?

A That it had taken place, that they had

taken place, those were public records.

Q No. Before that they were about to take place?

A I'm sorry. Would you repeat the question?

Q Let me rephrase it. The September 21 memo to Mr. Bowles contained some information with respect to the receivership that was already public information, is that fair to say?

A Yes.

Q It also contained some information that was not public yet or at least not confirmed publicly with respect to the forthcoming indictment of Mr. Hale. Is that correct?

A Yes.

Q Now, you've testified that it was important for the administrator to have some information about the forthcoming indictment because when he did become -- when he was indicted, you'd have press scrambling all over the building trying to get a microphone in his face and get a statement from him, is that fair to say?

A Yes.

163

Q Similarly, since at this point there had been some connections drawn to Mr. Hale, by virtue of being from Arkansas, if nothing else, to the White House, I think it would also be -- well, let me ask, do you think it also would be likely that the White House would get inquiries about Mr. Hale's indictment?

A In that context, yes.

Q Do you think it would have been, and I'm just asking for your opinion on this, do you think it would have been appropriate or at least arguably so that the White House would seek that information or obtain that information?

MR. GICALE: You know, I'm going to object to his giving, rendering conclusions as to whether the White House, it would be appropriate for the White House to do that. If you want to ask him about whether he thinks it's appropriate for his agency to give it to them.

BY MR. IVEY:

Q That's a better way to phrase the question. Do you think it would have been

164

appropriate for the SBA to provide that information to the White House?

A We would not have been in a position to provide that information at that time because the indictment, once again, was the process of the criminal -- it was a product of the criminal process. We knew of it because of our tangential involvement with Capital Management. So it's hard for me to, it's not SBA material in that sense. It's not, I do not believe it was inappropriate to advise the administrator of the agency with what might happen related to an SBA related case. But it would not have been the normal chain of inquiry to inquire of SBA about the indictment by the White House.

Q Because it's not in your whole --

A It was totally in the control of the Justice Department. We knew about it because of our tangential involvement with the Justice Department, with the U.S. Attorney in Little Rock. We were working in conjunction with them. It was an SBA-related matter, but it was their matter. So it's unlikely that that would arise under those

circumstances.
Q So it would be similar to the media inquiries that you handled?
A Yes, and you have to draw that distinction for people to really understand it. That's not our responsibility. That's not our ballgame and the material that supported that indictment might have come partially from SBA material and it might not.
Most of the material, my understanding is that that indictment was developed out of an investigation of third parties and Hale's name came up. Appropriate sources pursued the information to its conclusion and it resulted in an indictment for having violated Small Business Investment Act. But we did not have that, we were not the generators of most of that information so we didn't have the ability to transmit it and it probably wouldn't have come up that way.
MR. IVEY: I think I may be done here. I just need a minute more to review my notes.
(Pause.)
That's all for me at this time.

MR. GICALE: I have nothing further.
(Whereupon, at 1:47 p.m., the deposition was concluded.)

MARTIN D. TECKLER

I, PATRICIA A. ZUBER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Notary Public in and for the
District of Columbia

My Commission Expires FEBRUARY 14, 2000

BRIEFING BOOK PROVIDED TO THE

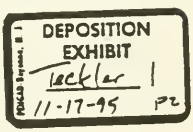
SENATE SPECIAL COMMITTEE TO INVESTIGATE
WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

IN PREPARATION FOR THE DEPOSITION OF

WAYNE FOREN
FORMER SBA ASSOCIATE ADMINISTRATOR FOR INVESTMENT

TO BE HELD ON OCTOBER 26, 1995
AT ROOM 534 DIRKSEN SOB

SUBMITTED BY WAYNE FOREN
OCTOBER 24, 1995



October 24, 1995

Viet Dinh
Special Committee on Whitewater
534 Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Dinh:

This is in response to your request.

I understand that my deposition on matters relating to Capital Management is now scheduled for Thursday, October 26 at 9:30 a.m.

You also requested that I furnish you a copy of information provided to the House Banking & Financial Services Committee. Enclosed is the information you requested. I have also enclosed a brief profile of Capital Management that may be helpful. The profile was developed after the House hearing.

If you have any questions concerning this matter, please call me on (703) 451-2723.

Sincerely,

Wayne Foren

enclosure

SUMMARY

Capital Management was licensed in 1978 as a Specialized Small Business Investment Company (SSBIC) with $500,000 private capital. SSBICs may only provide financial assistance to small business concerns owned by persons who are socially or economically disadvantaged. These businesses are to be independently owned and managed and the funds are to be used for the sound financing of the small business and its growth, modernization or expansion.

From 1978 to 1991, Capital Management increased its private capital to $1.5 million and obtained $3.4 million in financial assistance (leverage) from SBA. During this period, Capital Management supposedly made 79 financings to eligible small business concerns totaling $9.8 million. Most of these financings were probably bogus.

In 1992, David Hale claimed that Capital Management had received $13.8 million in donated assets and then he wanted $6 million in leverage based on this capital increase.

As Associate Administrator for Investment (head of the SBIC Program), I tried to give Capital Management every consideration but at the same time required the licensee to comply with Program requirements. On May 5, 1993, it became apparent to me that David Hale was attempting to defraud SBA; therefore, I referred the matter to the SBA Inspector General to determine the source of the donated assets and to assure that these assets were unencumbered or restricted.

This matter was referred on to the Justice Department and the FBI Agent assigned to the case disclosed to our staff that Capital Management's 1988 capital increase was bogus. This transaction was the basis for David Hale's 1993 indictment and SBA's taking Capital Management into receivership in September 1993. As a result of the Whitewater hearing in the House, it became apparent that the 1986 capital increase was also bogus.

Enclosed is a brief profile relating to the capital increases and leverage as well as Mr. Hale's attempt to cover up bogus loans and investments by exchanging assets.

Also enclosed is a chronology of certain events together with supporting documents. These documents were provided to the House Banking and Financial Services Committee.

PROFILE

CAPITAL MANAGEMENT PROFILE

DATE LICENSED: March 14, 1978

OFFICERS, DIRECTORS, AND OWNERS: (as of 11/30/92)

NAME	TITLE	OWNERSHIP Shares	Percent
David Hale	President/Director	2,150	76.8%
Linda Sue Hale		325	11.6%
Hazel Dennis		325	11.6%
Tom Anderson *	Vice President/Dir.	0	0
James Hall	Treasurer/Director	0	0%
George Ivory	Secretary\Director	0	0%
total		2,800	100%

* On March 29, 1993, Tom Anderson resigned as an officer and director of Capital Management.

CAPITALIZATION:

03/14/78	Initial capital	$ 500,000
03/25/86	Capital increase 1	502,000
11/04/88	Capital Increase 2	400,000
	total	$ 1,402,000
09/30/92	Capital Increase 3	13,800,000
	total	$15,202,000

1. Dean Paul Transaction:

   - On February 28, 1986, Dean Paul borrowed $825,000 from Madison Guarantee as an agent for David Hale and Capital Management. The purpose of the loan was to purchase a failed restaurant and two parcels of land. Properties were valued at more than three times their true value.

     Loan proceeds net of outstanding mortgages were $502,000 which were deposited in Capital Management's account. On 3/25/86, Peoples Bank & Trust Co. issued a letter to SBA claiming funds were on deposit and unrestricted.

     From these proceeds, Capital Management made two loans:

     - On 2/28/86, $150,000 was loaned to Castle Water & Sewer which was owned by Governor Tucker who at the time was Madison Guarantee's lawyer.

     - On 4/03/86, $300,000 was loaned to Masters Marketing which was owned by Susan McDougal, wife of Jim McDougal.

NOTE: Neither of these loans were repaid. Mr. Hale exchanged the Masters Marketing asset for a note from Cole Masonry (see below). Mr. Cole told the SBA examiners that he needed to do the exchange to "clean up his books".

NOTE: In 1992 when I became aware that Hale was swapping assets (one portfolio security for another), I directed him in writing to cease the practice.

Stephen Smith loan: On 2/21/86, Mr. Smith received a $65,000 loan from Capital Management to provide working capital for his communication company. He actually used the funds to pay off a mortgage on a property owned by Kings River Land which was a partnership composed of:

- o Stephen Smith,
- o Austin Smith (Stephen's Father),
- o James McDougal, and
- o Jim Guy Tucker.

It is noted that Stephen Smith had been a Special Assistant to Governor Clinton.

2. 1988 Bogus $800,000 transactions:

- o On 11/04/88, a Louisiana stockbroker fraudulently transferred $800,000 from a client's account to Capital Management:

  - $400,000 went into a savings account and represented as a capital increase. Mr. Hale represented that these funds were the proceeds of the sale of his wife's small commercial center.

  - $400,000 were in the form of cashier checks to apply to three delinquent loans:

Sunbelt Group, Inc.	$380,000
Richard M. Grasby, PA	11,750
MaBe Communications, Inc.	8,250
total	$400,000

o Funds were returned to the brokerage account in November 1988 through three bogus accounts as follows:

DATES FROM CM	DATES FROM SBC	PORTFOLIO CONCERN	AMOUNT
11/8/88	11/14/88	McIntire Numismatic Auctions, Inc.	$300,000
11/9/88	11/09/88	Lame, Inc.	300,000
11/9/88	11/22/88	River Valley Hydraulics & Supply, Inc.	200,000
		total	$800,000

NOTE: None of these loan/equity positions were converted to cash. Rather, they were exchanged for other securities issued by questionable entities at questionable values (see below).

3) 1992 Donated Assets represented as a Capital Contribution:

o On 9/30/92, Capital Management represented that two assets were donated valued at $13.8 million as follows:

	MILLIONS
Pool certificate of medical receivables	$11.5
Capital stock of National Building Supply	2.3
total	$13.8

Assets were donated by Concorde International, Ltd., an off-shore private investment company in the Grand Cayman Islands.

LEVERAGE:

	APPLICATION DATE	FUNDING DATE	DEBENTURES	PREFERRED STOCK
		1980		$ 500,000
		12/09/83	$ 500,000	
1)		09/10/86	1,000,000	500,000
2)	11/04/88	03/30/89	500,000	400,000
	total provided		$2,000,000	$1,400,000
3)	09/30/92	not funded		1,400,000
	09/30/92	not funded		6,000,000

NOTES:

1) Based on 1986 bogus capital increase.
2) Based on 1988 bogus capital increase.
3) Based on 1992 bogus capital increase.

EXCHANGED PORTFOLIO SECURITIES:

A. On 2/15/91 the following securities were exchanged:

TRANSFERRED		RECEIVED	
McIntire	$300,000	Med-A-Corp.	$420,000
Southern Foods	113,650		
total	$413,650	total	$420,000

B. On 4/12/91, the following securities were exchanged:

TRANSFERRED		RECEIVED	
Masters Marketing	$380,622	Cole Masonry	$400,000
Insurance Econ.	23,301		
total	$403,923	total	$400,000

C. On 4/15/91, the following securities were exchanged:

TRANSFERRED		RECEIVED	
Retail Liquidators	$389,776	Converging Systems	$400,000
River Valley	248,413	Cyberspace Corp.	350,000
Lamé, Inc.	300,000	Patient Commo. Inc.	250,000
Arkansas Comm. Real.	58,425		
total	$938,189	total	$1,000,000

C. On 6/1/92, the following securities were exchanged:

TRANSFERRED		RECEIVED	
Converging Systems	$400,000	Ntl. Bldg. Supply	$2,514,000
Cyberspace Corp.	350,000		
Patient Commo.	250,000		
Liberty Mortgage	291,000		
Property Care	314,000		
Midwest Consultant	460,000		
Cole Masonry	449,000		
total	$2,514,000	total	$2,514,000

D. On 3/15/93, the following securities were exchanged:

TRANSFERRED		RECEIVED	
Med-A-Corp.	$420,000	FSA Fin. Serv.	$420,000

CHRONICLES V

CAPITAL MANAGEMENT
CHRONOLOGY OF EVENTS

09/30/92 David Hale notified SBA that Capital Management's private capital was increased by $13.8 million by donated assets.

09/15/92 Capital Management submitted an application for $6 million of leverage in the form of preferred stock.

A. 10/28/92 Certified letter to David Hale from Phyllis Dawson returning the licensee's application for $6 Million of leverage in the form of preferred stock.

Requested information on donated assets which formed the basis for the $13.8 million capital increase:

MILLION	
$11.5	Pool certificate of medical receivables
2.5	National Building Supply unrestricted, registered common stock
$13.8	TOTAL

B. 11/12/92 OGC opinion on Capitalization & Borrowings of SBICs: Inclusion of Donated Assets in Private Capital for Leverage Purposes.

OGC concluded that donated assets are not to be included in regulatory capital until they are converted to cash.

C. 12/08/92 Certified letter to Thomas Anderson, Capital Management, from Marvin Klapp:

- Conditional approval of the $13.8 million capital increase but excluding the increase from Regulatory Capital until converted to cash.
- Approval of exchange of assets subject to the assets received being converted to cash within 120 days.
- Return of the $6 million application for funding because the licensee was ineligible for such leverage.
- Notice that the $1.4 million application for funding was being processed

12/09/92 Mr. Hale was notified that approval of leverage would be subject to a current regulatory compliance of Capital Management.

02/19/93 Meeting in AA/I's office with David Hale concerning the capital increase and leverage application.

D. 03/11/93 Examination report on Capital Management issued. Regarding the source of the contributed non-cash assets,

- Central Arkansas Community Development Corporation Development Company (CACDC) was the source of the contributed assets: National Building Supply (NBS) stock and the Medical Receivable pool certificate.

- A September 30, 1992, letter to CACDC from First Dominion Financial Group, the custodian holding the pool certificate, stated the pool certificate had been delivered by Concorde International, Ltd. (Concorde) which allegedly was an off-shore private investment company domiciled in the Grand Cayman Islands.

- Concorde probably was the source of the NBS stock.

- Thom Anderson, president of CACDC, refused to provide any information concerning the source of contributed assets included whether Concorde was the source.

03/26/93 Letter to David Hale regrading Examination Report findings.

E. 04/20/93 Letter from David Hale regarding the Examination Report findings.

F. 05/05/93 Briefing of Erskine Bowles and referral of Capital Management to the Office of Inspector General for Investigation.

G. 05/05/93 Chronology of events regarding Capital Management's application for leverage and subsequent referral to SBA's OIG for investigation.

H. 05/05/93 Letter to David Hale from Joseph Newell (faxed) acknowledging receipt of Mr. Hale's April 20, 1993, letter regarding SBA's March 26, 1993, and April 19, 1993 letters.

Among other things, this letter notifies Mr. Hale that the information sought regarding donated assets has not been provided, therefore, the matter has been referred to the Inspector General for investigation.

I. 05/05/93 Letter to Joseph Newell from David Hale (faxed) responding to his May 5, 1993, letter and expressing shock regarding the referral to the OIG.

05/06/93 Erskine Bowles' confirmation hearing before the Senate Small Business Administration occurred this date.

J. 05/13/93 Memo to Wayne Foren from Claude Cooper concerning a phone call from David Hale on 5/13 regarding a possible meeting with Governor Tucker on a Community Bank Concept.

K. 05/19/93 Briefing outline provided to Erskine Bowles as an update on the status of Capital Management.

Notified Mr. Bowles that Capital management defaulted on Debentures and that SBA was proceeding to liquidation. Capital Management cured the default and we didn't transfer the licensee to liquidation.

L. 06/14/93 Memo to Charles Mezger and Phyllis Dawson from Joseph Newell regarding a phone call Mr. Newell received from FBI Special Agent David Reign concerning Capital Management. He stated that he was working with the US Attorney's office on Capital Management and he requested specified information.

7/20/93 FBI obtained a warrant to seize Capital Management records. Vince Foster found dead in park. Capital Management's Records were seized on next day

M. 8/04/93 Memo to Acting ADA/FIP from DAA/I notifying her of fraud against SBA by capital management based on information provided by US Attorney's office of Eastern District of Arkansas.

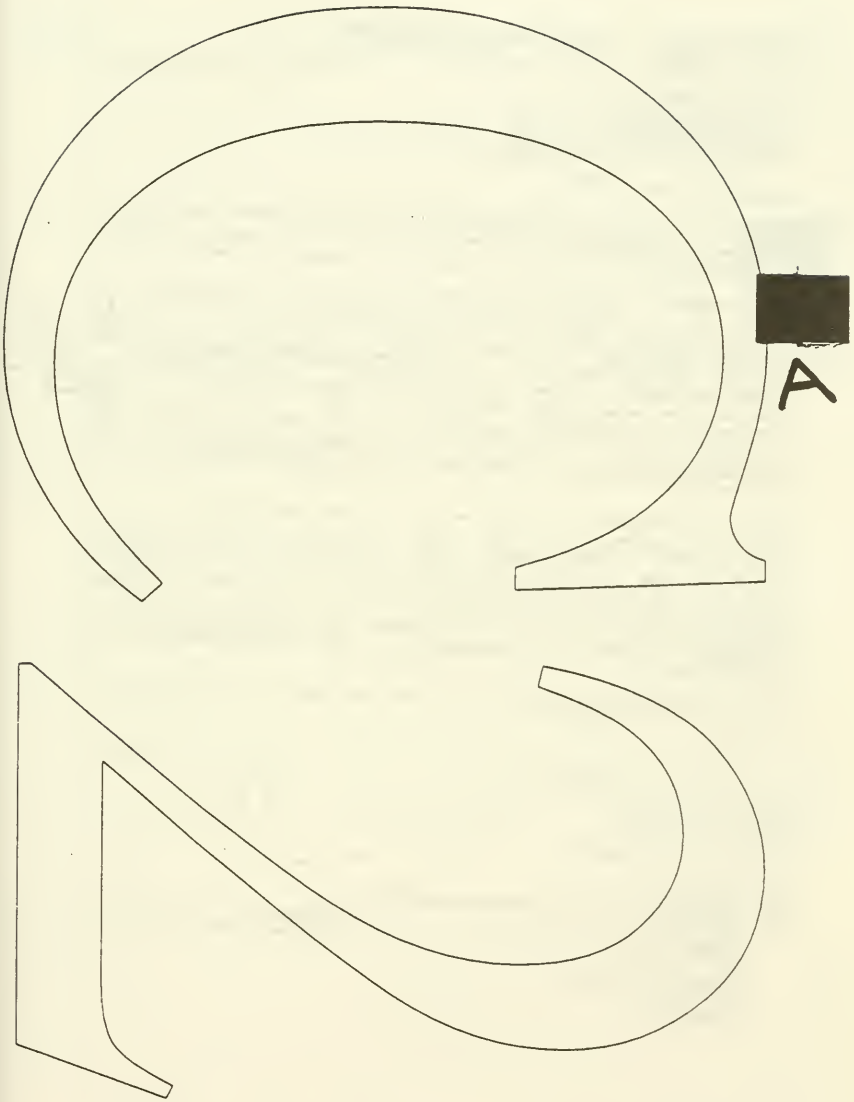
N. Undated Memo to ID committee from DAA/I notifying them of a meeting to be held on August 16, 1993 to consider transferring Capital Management to Liquidation.

O. 08/09/93 Briefing memo to Administrator Bowles from Wayne Foren on developments leading to possible criminal indictment of David Hale.

09/15/93 SBA appointed receiver of Capital Management. This was done with David Hale's agreement.

P. 09/21/93 Memo to Administrator Bowles providing him a status report on Capital Management and notifying him that David Hale was expected to be indicted on September 21 or 22.

10/22/93 Wayne Foren was reassigned by Administrator Bowles from the position of Associate Administrator for Investment to the position of Special Assistant to the Deputy Administrator.


A

Certified Mail - Return Receipt Requested

OCT 28 1992

License No: 06/06-5207

Mr. David Hale
Capital Management Services, Inc.
1910 North Grant, Suite 200
Little Rock, Arkansas 72207

Dear Mr. Hale:

Enclosed please find your preferred stock application which we are returning because the licensee does not have the requisite amount of regulatory capital for $6,000,000 of additional leverage.

The licensee's computation of regulatory capital on Page 6C of SBA Short Form 468 should provide a deduction of $13,759,782 for donated capital which is a non-cash contribution of medical accounts receivable and shares of National Supply Building. Since capital stock was not issued in exchange for the contribution, this deduction should be shown on line 8 (g) Other on Page 6C. At such time as the assets are converted to cash, the amount of cash received may be considered part of regulatory capital. Please refer to Part 107, App. 1 of the Regulations, Analysis of Capital Stock and Paid-In Surplus and Computation of Regulatory Capital, for an explanation.

Please provide details to SBA within 15 days from the date of this letter as to the transaction which gave rise to the donation of other assets to the licensee now included in Paid-in surplus, including the name of the donor, the nature of the donor's business, the nature of the relationship if any between the donor and the licensee, what consideration if any the donor received in exchange for the donation, and copies of any correspondence or agreements between the licensee and the donor concerning the transaction.

Please contact Walter Peterson at 202-205-7594 with any questions.

Sincerely,

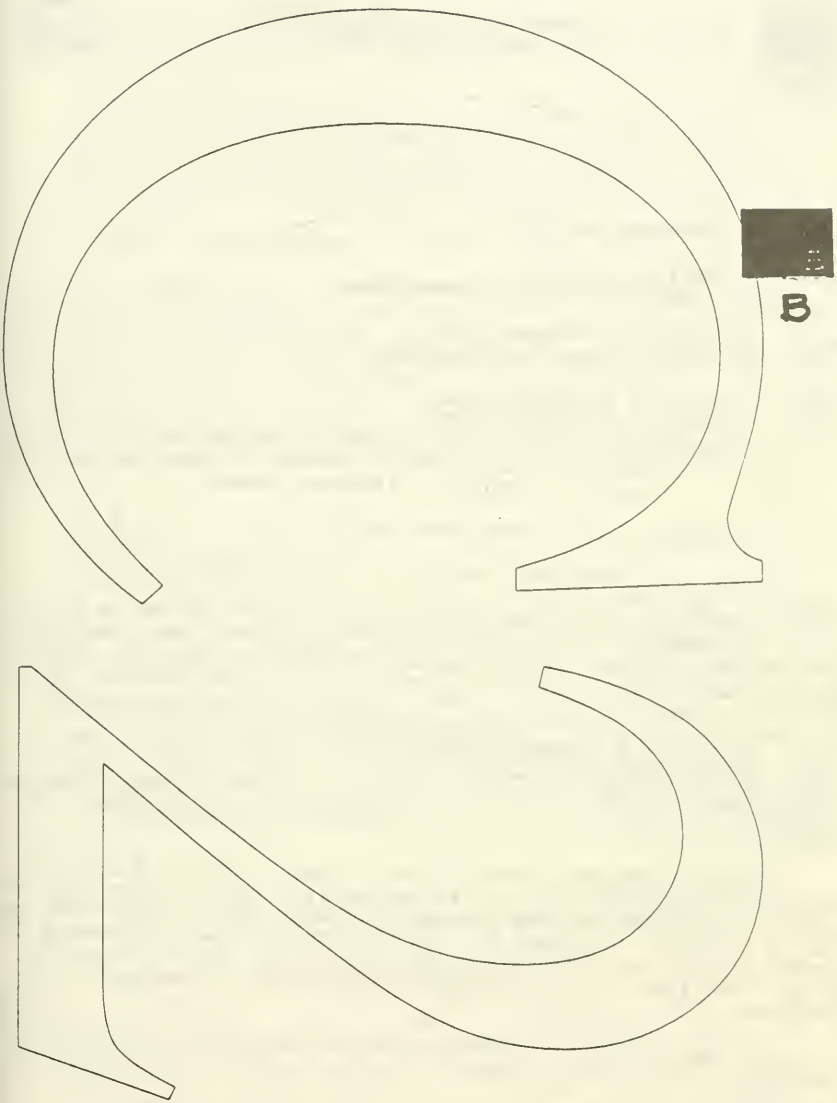
(Signed) Phyllis E. Dawson

Phyllis E. Dawson
Chief, Area II
Office of Investment

Enclosure
OI: PETERSON/10/21/92:FINAL:MJG:10/27/92
cc: AREA II
PETERSON
INV. 6-5-1
CONTROL # 10/92-047
CODE NO. C-3
8:CMSPFD.WP

PETERSON

C D C.


B

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

DATE: November 12, 1992

TO: Marvin D. Klapp
Director, Office of Investment

FROM: Howard S. Cooper
Chief Counsel for Investment

SUBJ: Capital Management Corp.
License No. 06/06-5207
Capitalization & Borrowings of SBICs, Private--
Inclusion of Donated Assets in Private Capital for
Leverage Purposes; Preferred Stock

Log No. 7311; See also Log No. 7203

It has long been SBA's position that a Licensee may, generally speaking, accept donations of securities or other assets, but that the donated asset will not be regarded as a part of the Licensee's Private Capital for any purpose, especially for leveraging purposes. Amoco Venture Capital Co., Log 4723 (1976); Heizer Capital Corp., Log 4883 (Feb. 4, 1977) and Log 5002 (June 27, 1977); Log 5437 (May 16, 1979); Letter to Dewey,Ballantine, Log 5565 (Dec. 20, 1979); VNB Capital Corp., Log 6295 (Sept. 20, 1983); FBS Small Business Investment Co., Log 6300 (Sept. 20, 1983); Hanover Capital Corp., Log 6364 (Dec. 30, 1983); U.S. Bancorp Capital Corp., Log 6885 (Dec. 20, 1988); Letter to Hughes and Luce, Log 6905 (Feb. 2, 1989); Letter to Dover & Dixon, Log 7203 (Aug. 1, 1991).

The memorandum submitted by Ms. Byrnes, Licensee's counsel, does not convince me that the foregoing line of decisions is arbitrary, capricious, and inconsistent with the Act; and that SBA is therefore obligated to include donated assets, to the extent that SBA is satisfied as to their value and/or liquidity, in the recipient Licensee's Private Capital for leverage purposes.

The basic point Ms. Byrnes makes was raised in the letter from Dover & Dixon and responded to more than a year ago:

The Act authorizes leverage to be extended on the basis of a Licensee's "combined private paid-in capital and paid-in surplus". While SBA has issued regulations defining what funds may be included in a Licensee's Private Capital, SBA has not, in the body of the

Regulations, addressed the question of what funds or assets may be included in a Licensee's "paid-in surplus."

What may be included in "paid-in surplus" is described in Appendix II, Account No. 420, which covers, among other things, "the amount of surplus arising from....(5) donations or gifts to the company of assets carried at not in excess of fair market value."

A copy of our response to Dover & Dixon is attached hereto.

If I understand Ms. Byrnes' position correctly, it is that the language of Account No. 420 more closely tracks the intent of Congress than does SBA's past interpretations. But if we are obliged to conclude either that Congress intended to require SBA to recognize donated assets as part of "paid-in surplus" for leverage purposes, or that SBA intended to adopt a policy position that anything included under Account No. 420 should be recognized as a part of a Licensee's leverage base, we are obliged to conclude also that Congress or SBA intended the following scenario as well:

(1) A purchases 1,000,000 shares of the $1 par stock of Licensee X, representing 100 percent of the Licensee's authorized stock.

(2) A pays $1,000,000 in cash for the stock. At this point, the Licensee's paid-in capital is $1,000,000 and paid-in surplus is zero. The Licensee's leverage base is $1,000,000.

(3) A donates 999,999 shares to the Licensee, but as the holder of the only outstanding share, A still owns 100 percent of the Licensee's stock. A also donates some pocket change, in the amount of $1. Now the Licensee has a paid-in surplus of $1,000,000. Has the Licensee's leverage base doubled?

The logic of Ms. Byrnes's position would compel a "yes" answer, since Account No. 420 also covers "donations to the company of its issued capital stock carried as treasury stock at fair market value or par value."

Ms. Byrnes also argues that SBA's definition of "Private Capital", as set forth in §107.3, does not preclude the recognition of donated assets as part of "Private Capital." SBA's regulatory definition speaks of "funds" and she cites Black's Law Dictionary in support of the proposition that the noun "funds" may include "notes, bills, checks, drafts, stocks and bonds, and in broader meaning may include property of every kind", citing State v. Finney, 114 Kan. 12 (1935) 40 P.2d 411,

421. It may be conceded that "funds" is a term whose meaning may vary with the context; but "funds" has also been judicially construed to mean "the proceeds of sales of real and personal estate, or the proceeds of any other assets converted into money". See Black's Law Dictionary citing Doane v. Insurance Co. 43 N.J. Eq. 533 (1887), 11 A. 739 and Illinois Christian Missionary Soc. v. American Christian Missionary Soc. 277 Ill. 193 (1917), 115 N.E. 118. SBA's position that "funds" means "money" is not an unreasonable one.

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

Michael R. Johns, Esq.
Dover & Dixon
425 West Capitol
Little Rock, Ark. 72201

Dear Mr. Johns:

Your letter of July 23, 1991 asks whether SBA would recognize, for leveraging purposes, the fair market value of certain non-cash assets that the sole shareholder of an unidentified small business investment company (SBIC) proposes to donate to the SBIC. These assets include common stock in a NASDAQ-listed company, real estate, securities of a privately-held company, real estate mortgage obligations, and a portfolio of negotiable automobile loan paper.

SBA will not recognize the fair value of the above-described donated assets as a part of Private Capital for leverage purposes.

> "The donated assets would not be considered a part of the SBIC's Private Capital until they are reduced to cash, nor would stock dividends or distributions in kind. Cash dividends or distributions received by the SBIC with respect to the donated securities could be included in Private Capital to the extent that the SBIC chooses to capitalize such earnings."
>
> See SBIC Log No. 6905 (February 2, 1989).

Furthermore, you should be aware that SBA may not allow the SBIC to accept everything that the shareholder may wish to donate.

Your position seems to be based upon a literal reading of Sec. 107.705 of the SBIC regulations (13 CFR, Part 107) and the explanatory language of Account No. 420. You apparently interpret Sec. 107.705 to mean that only assets of the types listed therein may be carried under the "paid in capital" account, and you concede that none of the assets in question in the instant case would qualify under the regulation. However, you then read the explanatory language of Account 420 as requiring SBA to recognize, as a part of "paid in surplus", the fair value of any other asset that might be donated to the SBIC.

If your position is correctly summarized, SBA disagrees but sees no need to address it on its merits. Your attention is directed to the enclosed copy of Page 6C of SBA Form 468, which

makes it clear that SBA does not recognize for leverage purposes the fair value of every asset that a Licensee may acquire.

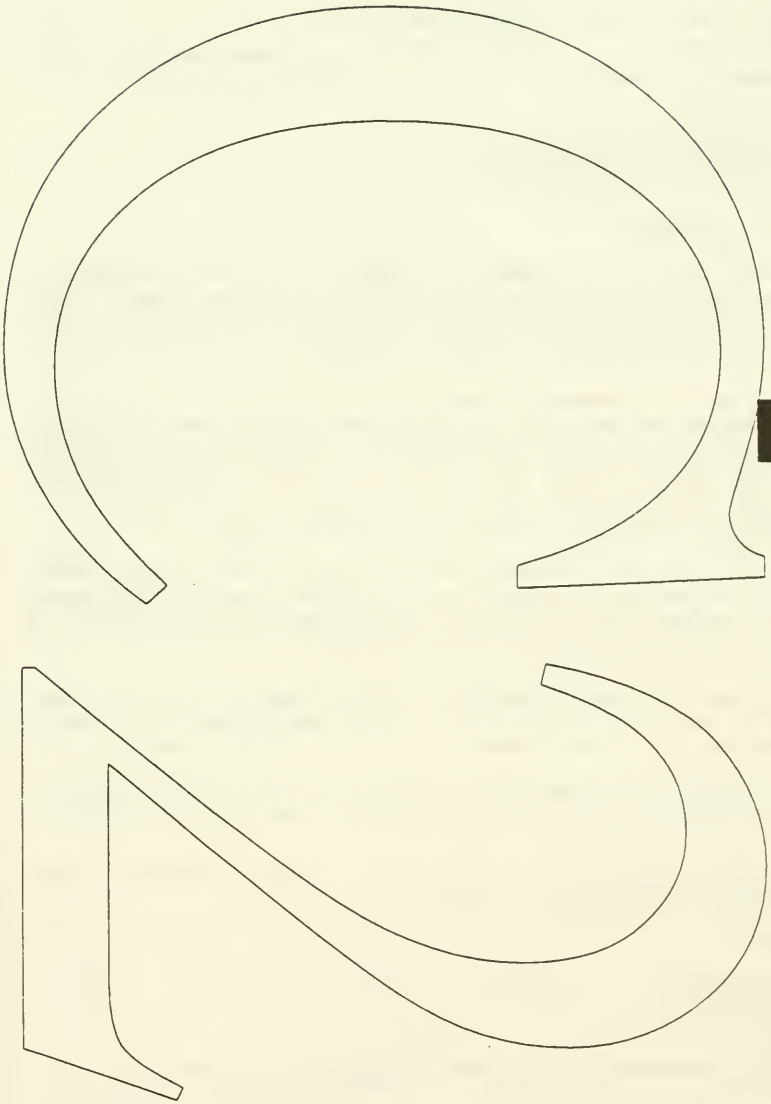
Your attention is also directed to Sec. 107.1004(a), which makes any increase in capitalization subject to "SBA postapproval as a condition for the continuance of the license." Generally speaking, SBA will not allow an SBIC to accept a donation of securities that would effectively cast the SBIC as an entrepreneur doing business through a subsidiary, or any donation that would expose the SBIC to the liabilities or other obligations of the donor, including tax obligations.

In certain circumstances, the financing of a small concern, or a temporary assumption of control over a small concern (with or without the participation of an Associate of the SBIC) may violate SBA regulations unless such action is necessary to protect an investment. Since the donee of a small concern's securities has a zero investment, a financing that would otherwise contravene applicable regulations, or a subsequent assumption of control, would both be absolutely impermissible. For the same reason, SBA will not allow an SBIC to spend money on the improvement of a donated asset.

I trust you understand SBA's position in this matter.

Sincerely,

Wayne S. Foren
Associate Administrator for
Investment



Certified Mail - Return Receipt Requested

DEC 8 1992

License No: 06/06-5207

BY FACSIMILE AND MAIL

Mr. Tom Anderson
Capital Management Services, Inc.
1910 North Grant, Suite 200
Little Rock, Arkansas 72207

Dear Mr. Anderson:

In regard to assets recently donated to Capital Management Services, Inc., we understand that such assets were given to the SBIC to increase the size of the licensee and that the donated assets will be converted to cash and then be available to fund minority small business concerns in Arkansas.

SBA approves the increase in capital of $13.8 million subject to our understanding that the licensee issued no new securities and there has been no transfer of control of the SBIC by any means whatsoever (see Section 107.601 of the regulations governing SBICs). No part of the $13.8 million will be recognized for regulatory purposes until converted to cash. Borrowing against the $13.8 million is not considered an asset conversion.

Although the assets received do not qualify as eligible SBIC investments, this office approves the recent exchange of assets (pursuant to Section 107.904(a) of the SBA Regulations), subject to the conversion of these marketable assets to $2.5 million in cash within 120 days from the date of this letter.

Final approval of the exchange of assets and any requests for funding are subject to the approval of the SBA Standards of Conduct Committee because of your membership on the SBIC Advisory Council.

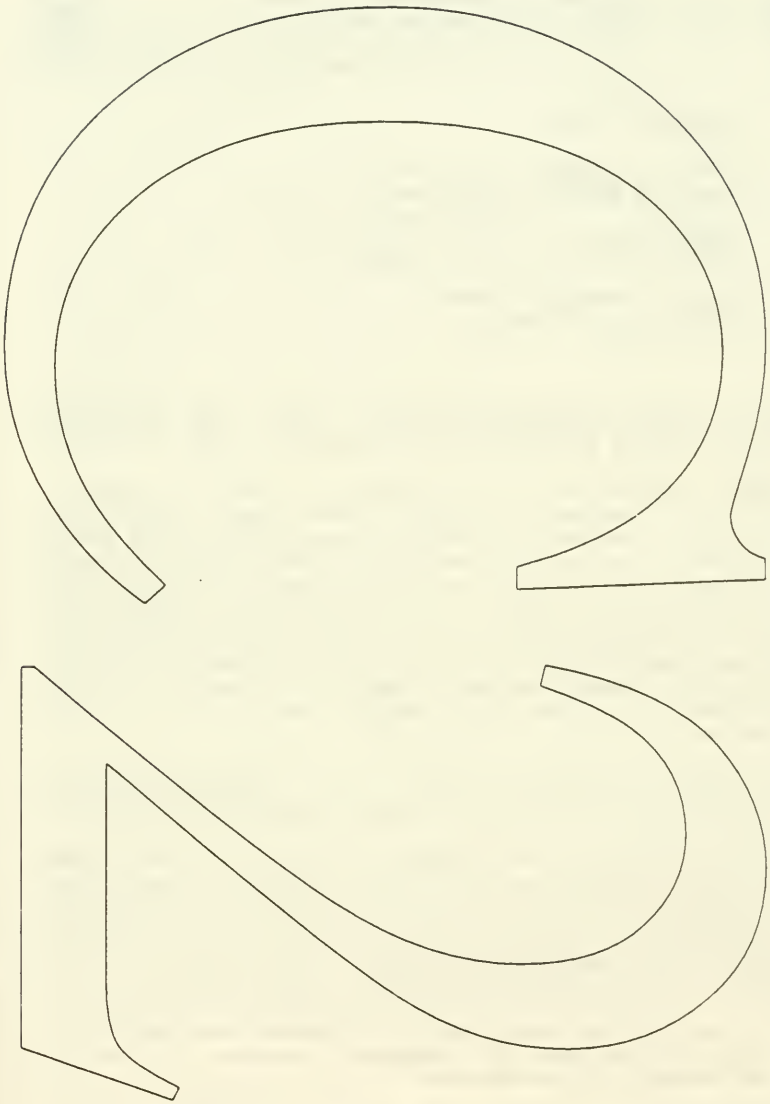
We are processing the application for $1.4 million of preferred stock and again returning the $6 million application which the licensee is ineligible for.

If you have any need for clarification, please call Mr. Walter Peterson. His number is (202) 205-7594.

Sincerely,

[Signed] Marvin D. Klapp

Marvin D. Klapp
Director
Office of Investment OI: PETERSON/12/7/92:FINAL:MJG:12/7/92
cc: AREA II PETERSON
INV. 6-5-1 FOREN. CODE No. C-3 S:CAPMAN2.TAN



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

Date: March 11, 1993

To: Joseph L. Newell
Director of SBIC Operations

From: Chuck Mezger
Acting Director of SBIC Examinations

Subject: Capital Management Services, Inc.
Little Rock, Arkansas
06/06-5207

Attached for your review and appropriate action is our Examination Report for Capital Management Services, Inc. The examination covered the 24-month period ending November 30, 1992.

During the examination, we attempted to obtain information regarding Central Arkansas Community Development Corporation's (CACDC) source for the National Building Supply (NBS) stock and the Medical Accounts Receivable exchanged for assets of, and donated to, the licensee (see Finding 1 and Other Matters). The reason for our concern was that, according to information in a letter dated September 30, 1992 to CACDC from the custodian holding the receivables (First Dominion Financial Group), the receivables had been delivered from Concorde International, Ltd. which, allegedly, is an off-shore private investment company domiciled in the Grand Cayman Islands. We believe that Concorde also may be the source for the one million shares of NBS stock.

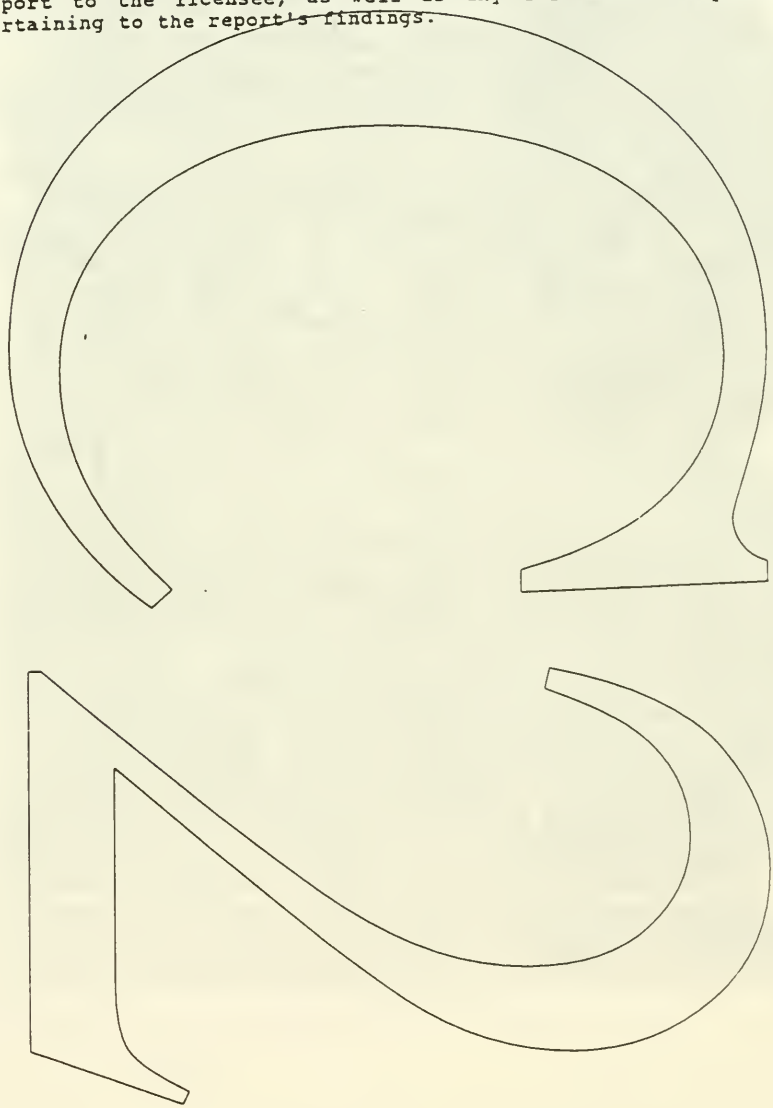
We asked Thomas W. Anderson, president of CACDC, about CACDC's source of the receivables and stock, but Mr. Anderson refused to provide any information, including whether Concorde was the source.

We believe the donation and exchange of assets raises serious questions, such as potential conflict of interest transactions, which we could not pursue because of Mr. Anderson's refusal to answer our questions regarding CACDC's source of the stock and accounts receivable. Without additional information, we believe the potential for undisclosed material facts exists in the transactions, including the potential for illegal activity.

Because of the unknown factors and the findings described in our report, we recommend that the licensee's pending $1.1 million funding application not be approved.

If you would like to discuss the report's findings, or need additional information, feel free to contact me on 205-7172.

Please provide our office with a copy of your letter forwarding the report to the licensee, as well as any further correspondence pertaining to the report's findings.



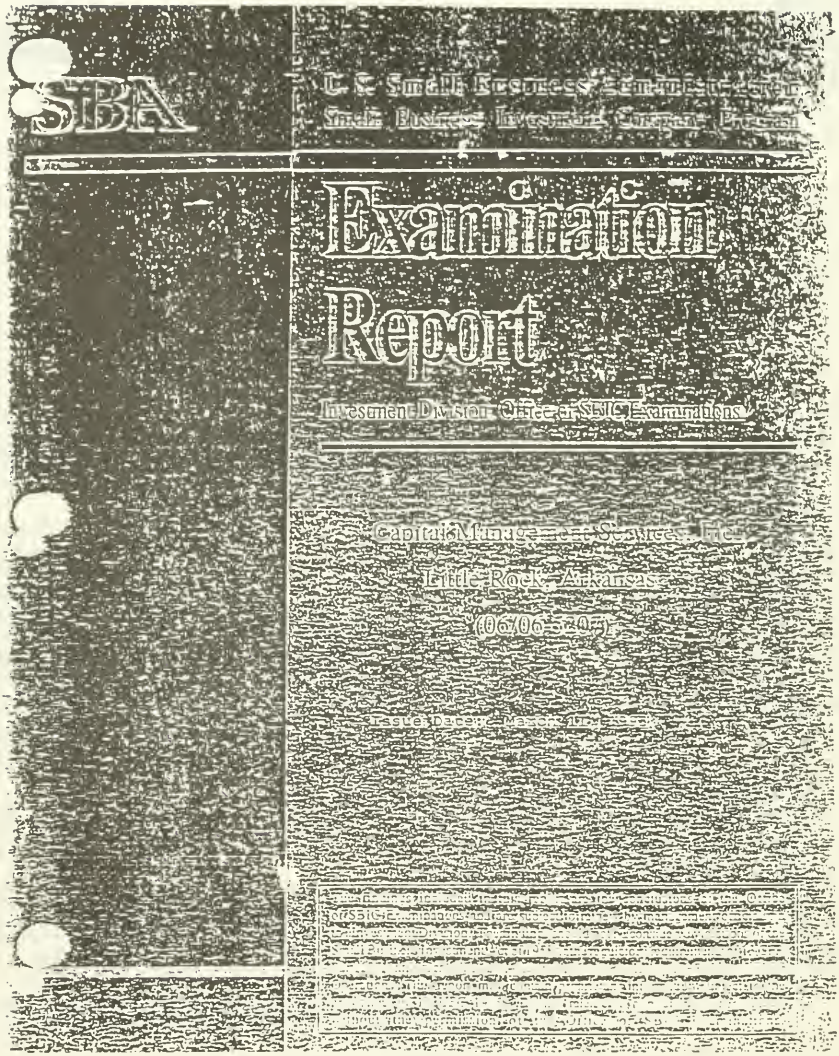

SBA
U. S. Small Business Administration
Small Business Investment Company Program
Examination
Report
Investment Division - Office of SBIC Examinations
Capital Mirage Source, Inc.
Little Rock, Arkansas
(06706-520)
Issued December 2, Master Print Date

Table of Contents

	PAGE
Summary	1
Introduction	
Background	2
Objectives and Scope	2
Follow-up on Prior Examination	3
Findings	
1. Assets transferred to an associate Overline investment Assets not properly safeguarded	4
2. Sale of assets misclassified Misrepresentation to SBA	7
Other Matters	13
Exhibits	
1. Unaudited Comparative Balance Sheet	18
2. Schedule of Officers, Directors, and Shareholders	19

Summary

We conducted an examination of Capital Management Services, Inc. of Little Rock, Arkansas, a Section 301(d) Small Business Investment Company (SBIC). The purpose of our examination was to determine whether the licensee complied with the laws, rules and regulations, and established policies governing the SBIC program. Our review covered financings made by the licensee, as well as administrative and internal controls as deemed necessary.

Our examination disclosed that the licensee:

-- transferred assets to an associate without SBA approval;

-- created an overline investment in an asset received in in exchange for portfolio assets;

-- did not properly safeguard its assets during the exchange; and

-- misclassified and misrepresented the sale of assets as financings to small concerns.

Our findings were discussed with Mr. David L. Hale, president and director of the licensee during the course of the examination and at an exit conference held January 15, 1993. His comments have been included in the report where appropriate.

Introduction

Background

Capital Management Services, Inc. was incorporated under the laws of the State of Arkansas on September 14, 1978 and was licensed as a Section 301(d) licensee by the Small Business Administration (SBA) on March 14, 1979.

The licensee's office is located at 1910 North Grant Street, Little Rock, Arkansas. The licensee's daily operations are managed by David L. Hale, president and director. During the examination period, the licensee elected three new officers and directors. All changes were reported to SBA. See Exhibit 2 of this report for a schedule of the licensee's officers and directors.

The licensee's private capital of $1,406,310 remained the same; however, in September 1992 the licensee received about $13.8 million in donated capital (see Other Matters). SBA continues to own $1.4 million of 3 percent preferred capital stock. Also, there has been no change in the $2 million in SBA debentures.

An unaudited comparative balance sheet of the licensee as of November 30, 1990 and November 30, 1992, is shown as Exhibit 1 of this report.

In a letter dated December 9, 1992, SBA informed the licensee that it would accept its application for second tier preferred stock leverage in the amount of $1.4 million. However, the final decision on the application would require an examination of the licensee.

Objectives and Scope

The purpose of our examination was to determine whether the licensee complied with the laws, rules and regulations, and established policies governing the SBIC program. Although we reviewed selected general ledger accounts, we did not perform a financial audit, and therefore, do not express an opinion on the licensee's financial statements.

Capital Management Services, Inc. was examined for the 24-month period ended November 30, 1992. During this period, the licensee made 16 financings (totalling $2,768,297) to 14 small concerns. Our examination included a review of 13 financings (totalling $2,756,297) to 12 small concerns. This represented 81 percent of the financings made by the licensee during this period and 99.6 percent of the aggregate dollar amount of financings. The on-site phase of our review was completed on January 21, 1993.

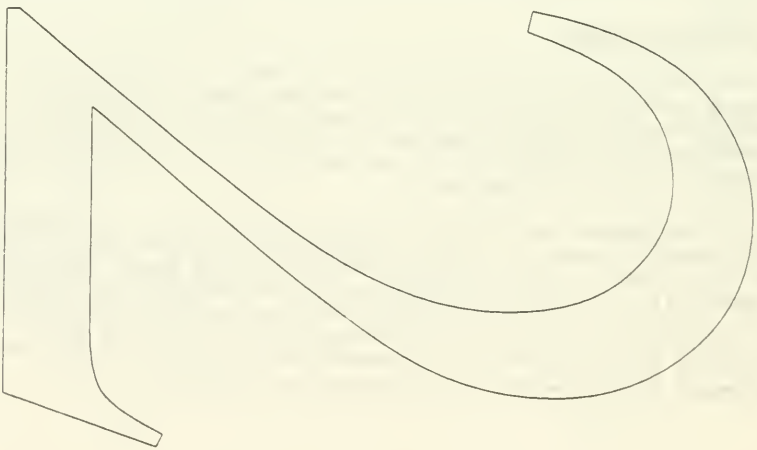
Our examination included a confirmation of cash on deposit, a review of cancelled checks, wire transfers and related supporting documentation for disbursements, as well as a review of other financial records.

For the selected financings, we reviewed notes, loan and debenture agreements, stock purchase agreements, financial statements, and/or supporting documentation, including background data on the small concerns and their principals. For selected portfolio concerns, we obtained credit reports and verified the financings by direct confirmation. We also visited four portfolio concerns to observe general operations and verify the terms and conditions of the licensee's financing.

We reviewed the licensee's procedures to ensure dual signatures on checks and to safeguard securities. We also reviewed the licensee's portfolio valuation procedures, as well as the supporting documentation for valuations of loans and investments as of November 30, 1992. To the extent practical, we used the independent accountant's report for the fiscal year ended June 30, 1992.

Follow-up on Prior Examination

The prior examination report, which covered the 26-month period ended November 30, 1990, identified regulatory violations regarding inadequate documentation for its portfolio valuation, financing an ineligible concern, not preparing eligibility profiles, exceeding the cost of money limitation and not maintaining dual control over disbursements, all of which have been corrected and resolved to the satisfaction of SBA.



Findings

Finding 1: Assets transferred to an associate - Section 107.904(a)
Overline investment - Section 107.710(b)(3)
Assets not properly safeguarded - Section 107.1003(a)

In June 1992 the licensee transferred its investments in seven portfolio concerns to an associate in exchange for $2,514,000 of a publicly traded stock, the identity of which was unknown to the licensee at the time of the exchange. Because the exchange was made with an associate of the licensee, licensee personnel should have obtained prior approval from SBA but did not do so. In addition, once the stock was received by the licensee in September 1992, the exchange resulted in an overline in that the acquired stock represents 179 percent of the licensee's approved private paid-in capital. In effect, the licensee exchanged approximately 50 percent of its assets, some of which were income producing, without knowing the identity or quality of the stock to be received; the stock has since declined in value.

Section 107.904(a) of the regulations states that except with a prior written exemption from SBA in special instances, a licensee shall not dispose of assets to any associate. As a prerequisite to such exemption, the licensee must demonstrate that the proposed terms of disposal are no less favorable to it than are obtainable elsewhere.

Section 107.710(b)(3) of the regulations, regarding assets-acquired-in-liquidation of portfolio investments, states, in part, that the aggregate amount of the licensee's investment may not exceed the amount allowed under Section 107.103, or 30 percent of private paid-in capital for Section 301(d) licensees.

Section 107.1003(a) of the regulations states that each licensee shall adopt a plan designed to safeguard its assets and monitor the reliability of its financial data.

On June 1, 1992, the licensee assigned to Central Arkansas Community Development Corporation (CACDC) the following portfolio investments in exchange for the future receipt of "$2,514,000 in public traded stock at least stock traded on NASDAQ" (the assignment agreement did not specify the stock or a time frame for the delivery of the stock):

Portfolio Concern	Type and Cost Basis of Investment	
Liberty Mortgage, Inc.	Equity	$ 275,000
	Loan (P) & (I)	16,000
Property Care, Inc.	Loan (P) & (I)	314,000
Midwest Consultant, Inc.	Loan (P) & (I)	460,000
Cole Masonry and Construction	Loan (P) & (I)	449,000
Converging Systems, Inc.	Equity	400,000
Cyberspace Corporation	Equity	350,000
Patient Communications	Equity	250,000
Total		$2,514,000

(P) & (I) = Principal and accrued interest

CACDC is a non-profit corporation whose purpose is to provide economic development and services to the community. CACDC's sole owner and director is Thomas W. Anderson who is also the licensee's vice president, assistant secretary, chief financial officer and a member of the board of directors. Because of Mr. Anderson's relationship with CACDC and the licensee, the exchange transaction resulted in disposition of the assets to an associate. No SBA approval was obtained to transfer the assets to an associate; however, SBA is aware of the transaction. In a letter dated December 8, 1992 to the licensee, SBA informed the licensee that approval for exchange of the assets was subject to the conversion of the stock to $2.5 million in cash within 120 days.

On October 1, 1992, the licensee received confirmation from Merrill Lynch that as of September 30, 1992, one million shares of National Building Supply (NBS) common stock was placed in the licensee's account with a closing bid price of $4.75 per share. Of the one million shares, 529,263 ($2,514,000) shares represented the stock that was delivered by CACDC in exchange for the assets, and the balance of 470,737 shares represented a donation of assets to the licensee by CACDC to increase the licensee's capital (discussed later in Other Matters).

Although the licensee's board of director's approved the exchange of the assets in June 1992, the licensee's files contained no evidence as to the extent of the due diligence performed on NBS, except for a copy of the June 1992 Form 10-Q Report. Furthermore, there was no evidence that the board of directors approved acceptance of the stock. According to the licensee's president, the board of directors relied on Mr. Anderson to provide the necessary information on the stock, and the board was informed in September 1992, at an informal board meeting, that the National Building Supply stock was available. The president further stated that Mr. Anderson discussed other stocks but recommended the NBS stock, and the licensee could have refused the NBS stock.

To determine the licensee's potential risk in the NBS stock, we reviewed the June and September 1992 Form 10-Q reports submitted by NBS to the Securities and Exchange Commission. We obtained the September 1992 report directly from NBS.

Our review disclosed that NBS's sales for the three months ended June 30, 1992 were $792,564, compared to $2,009,301 for the same period in 1991, which represents a 62 percent decrease. For the six-month period ended September 30, 1992, sales were $1,598,417 as compared to $4,105,435 for the same period in 1991, for a 61 percent decline.

Shareholder equity has also decreased significantly. For the three month period ended June 30, 1992, shareholder equity decreased from a deficit of $332,792 at year end to a deficit of $560,071. For the six month period ended September 30, 1992, shareholders' equity decreased to a deficit of $679,135.

In addition to the significant decline in NBS financial position, the Form 10-Q reports indicated that NBS was experiencing liquidity and cash flow problems.

We were also unable to ascertain from reviewing the 10-Q reports when and to whom NBS issued the stock; however, the licensee's one million shares represented approximately 19 percent of NBS's outstanding common stock as of September 30, 1992.

We confirmed the licensee's investment with Merrill Lynch (ML), the brokerage firm holding the stock. ML advised us that the common stock was issued just prior to being sent to them, probably on about September 22, 1992, and the stock is "144 legend stock" which is restricted stock. As to the marketability of the stock, ML informed us that the stock is traded by over-the-counter (OTC) dealers, and is marketed by its various market makers. As of our examination date, the stock had a closing bid price of $4.75 per share, but, as of January 18, 1993, the closing bid price was $4.00 per share.

We believe that the licensee took an undue risk in exchanging its assets and accepting a stock whose marketability may be limited or unknown, especially since it represents such a large block of outstanding shares. Consequently, the licensee may find it difficult to readily sell the million shares of restricted stock.

Furthermore, the licensee has 179 percent of its private paid-in capital in one investment. SBA has disallowed $13.8 million of donated assets as paid-in capital for regulatory purposes (see Other Matters); as a result, paid-in capital for regulatory purposes is only $1,406,310. The licensee's $2,514,000 in NBS stock represents 179 percent of that amount, an overline under the regulations.

We discussed the events with Mr. Hale, the licensee's president, and Mr. Anderson, who was instrumental in the transactions. Mr. Anderson stated that the reason for the exchange was to provide liquidity to the licensee. He further stated that at the time of the exchange CACDC did not have any stock to give to the licensee, and did not know what stock would be given to the licensee. Regarding due diligence and marketability, Mr. Anderson said the Form 10-Q and K reports were reviewed, and he talked to various market makers. He was informed that the price range for the stock was $4-5 per share, and that the stock was NASDAQ quality or better. Mr. Anderson also said the stock was restricted, but there is a market for this type of stock, and the latest price was in the $4-5 range in Tampa, Florida. We also asked Mr. Anderson where CACDC obtained the NBS stock which was then given to the licensee. Mr. Anderson stated that the acquisition was a private transaction, and no details would be given to us regarding the transaction.

As of the conclusion of our on-site examination, none of the stock had been sold.

The investment was recorded as "Other Receivables" on the books of account. In accordance with SBA's Chart of Accounts, the $2,514,000 investment should be recorded in account 220, "Notes and other securities received on sale of portfolio securities".

Licensee's Comments

Mr. Hale, the licensee's president, said it was an oversight in not realizing assets were being sold to an associate, and SBA is aware of the transaction. Mr. Hale also said that the licensee had a valid contract for the delivery of the stock with the right to accept or refuse the stock. Both he and Mr. Anderson thought it was "NASDAQ quality" stock based on the information they had at the time of the decision. Also, Mr. Hale said that he knew that it was 144 stock but did not know what it meant at the time. He further stated that Mr. Anderson knew that it was 144 stock and probably assumed the whole board knew what it meant, and the board depended on Mr. Anderson because of his expertise. Mr. Hale said the licensee plans to sell the stock as soon as possible.

Finding 2: Sale of assets misclassified - Section 107.1002(a)
Misrepresentation to SBA - Section 107.906(b)

The licensee classified the sales and trades of its investments in portfolio concerns as financings. Furthermore, the transactions were reported to SBA as financings which constituted a misrepresentation of fact because, except in one case, no direct financial assistance was provided to the small concerns.

Section 107.1002(a) of the regulations states that current financial records, including books of account, are to be maintained in all material respects in accordance with SBA's system of account classifications.

Section 107.906(b) states that any false statement knowingly made, or misrepresentation or failure to state a material fact necessary in order to make a statement not misleading in the light of the circumstances under which the statement was made, in any document submitted to SBA constitutes a violation of the regulations.

SBA Policy and Procedural Release #2011, Licensee Reporting for Program Evaluation Portfolio Financing Report (SBA Form 1031) states in Section I that information from these reports is used to demonstrate the value of the "financing" and management services made available to small business concerns by licensed SBICs to Congress, the Executive Branch, and the public at large. This information is also used to monitor the current status and needs of the program. Therefore, SBA is insistent in its requirement that licensees furnish promptly and completely the necessary program data in accordance with the reporting procedures set forth in the release; therefore, Section II requires:

> A Portfolio Financing Report (Form 1031) must be sent to the Investment Division of SBA by each licensed SBIC within fifteen days of making a Financing to a small business concern.

Section 107.3 of the regulations defines "Financing" as outstanding financial assistance provided to a small concern by a licensee whether through (a) loans, (b) guaranties, (c) debt securities, (d) equity securities, (e) commitments or (f) purchases of securities of a small concern through or from an underwriter. Sales or exchanges of assets are not included.

During the period examined, the licensee sold or traded its investments in 14 portfolio concerns to 7 other small concerns. No funds, except in one instance, were disbursed to the small concerns purchasing the licensee's investments. The licensee financed the sales by making a loan and/or receiving equity securities in the seven concerns purchasing the investments.

The licensee, however, recognized the sales as financings and recorded the transactions in the portfolio investment accounts, "Loans to Small Business Concerns - Loans " and "Equity Interests of SBCs - Capital Stock of SBCs - Other", instead of recording the transactions as "Notes and other securities received on sale of portfolio securities".

The sales were not "financings," as defined by the regulations, because, except in one case, the purchasing small concerns did not receive any financial assistance. The sales were reported to SBA on Portfolio Financing Reports (SBA Forms 1031) as financings, which was a misrepresentation of the actual transactions.

The specific details for each of the sales/trades follow. The transactions are subcaptioned by the name of the small concern purchasing the licensee's investments:

Autometrics, Inc.

On March 5, 1991, the licensee sold the following investments in portfolio concerns to Autometrics, Inc., for $330,000:

Portfolio Concern	Investment
Multi Marketing	$ 400 (E)
	64,368 (P)+(I)
Carens, Inc.	75,000 (E)
	81,311 (P)+(I)
Yell Forestry Products	490 (E)
	182,865 (P)+(I)
Total	$404,434

(E) = equity
(P) = loan principal
(I) = accrued interest

To finance the sale, the licensee made a $150,000 loan and acquired 490 shares of Autometrics' common stock for $180,000. Although the SBA Form 1031 showed that the purpose of financing (use of proceeds) was inventory and working capital, no funds where disbursed. In addition, the licensee realized a $74,434 loss on the sale. As of the examination date, the outstanding balances remained at $150,000 and $180,000.

Arkansas Commercial Realty (ACR)

The licensee made a $227,000 loan to ACR on September 22, 1992. The purpose of the loan was as follows:

Purchase licensee's investment in Townsend Financial Services	$142,814
Refinance 11/89 $150,000 loan balance	47,186
Funds disbursed to ACR	37,000
Total	$227,000

The SBA Form 1031 submitted to SBA showed the purpose of the financing as working capital when only a small portion ($37,000) of the total loan funds was actually disbursed. No gain or loss was realized on the sale. As of the examination date, $211,344 was outstanding.

Property Care, Inc.

On February 1, 1991, the licensee sold its investments in the following portfolio concerns to Property Care for $275,000:

Portfolio Concern	Investment
International Trading	$188,930 (P)+(I)
	18,289 (P)+(I)
Minority Management Co.	18,654 (P)+(I)
	36,428 (P)+(I)
Total	$262,301

The licensee made a $275,000 loan to finance the sale, and no funds were disbursed. According to the Form 1031 sent to SBA, the purpose of the financing was for "working capital, leverage and equipment." The licensee realized a $12,699 gain on the sale. Furthermore, the investment in Property Care was then sold to CACDC in June 1992 (see Finding 1).

Cole Masonry & Construction, Inc. (Cole)

On April 12, 1991, the licensee made a $400,000 loan to Cole to purchase the licensee's investments in the following portfolio concerns:

Portfolio Concern	Investment
Master Marketing	$380,622 (P)+(I)
Insurance Economists	23,301 (P)+(I)
Total	$400,923

The purpose of the financing reported to SBA on the Form 1031 was "capital-bonding," but no funds were disbursed. In addition, the licensee realized a $923 loss. Subsequently, in June 1992, the licensee sold, at cost, its investment in Cole to CACDC (see Finding 1).

Midwest Consulting (Midwest)

In April 1991, the licensee sold its investments in the following portfolio concerns to Midwest in exchange for a $410,000 loan:

Portfolio Concern	Investment
Paul Sales Co. (2 loans)	$387,715 (P)+(I)
Warren Shell Construction	15,004 (P)+(I)
Old Country Deli	9,865 (P)+(I)
Total	$412,584

The SBA Form 1031, submitted to SBA by the licensee, showed the purpose of the financing as "security, bonding, and working capital"; however, no funds were disbursed. In June 1992, the licensee sold, at cost, its investment in Midwest to CACDC (Finding 1).

Med-A-Corp

On February 12, 1991, the licensee acquired 29,400 shares of Med-A-Corp common stock for $408,750. In exchange for the stock, the licensee sold its investments in the following concerns to Med-A-Corp:

Portfolio Concern	Investment
McIntire Numismatic Auctions	$300,000 (E)
Southern Foods	4,900 (E)
	108,750 (P)
Total	$413,650

The licensee reported the acquisition of the stock to SBA as a financing with the purpose being "leasing, equipment, and equity." The licensee disbursed no funds for the Med-A-Corp common stock. In addition, the licensee incurred a $4,900 loss on the sale, and as of the examination date the outstanding balance for the investment was $408,750.

Incredible Closeout (Incredible)

The licensee received 4,666 shares of Incredible common stock on July 15, 1991. In exchange for the equity interest, the licensee sold its investments in the following concern:

Portfolio Concern	Investment
Little Rock Clothier (2 loans)	$189,510 (P)+(I)
	180,490 (E)
Total	$370,000

The Form 1031 submitted to SBA showed the purpose of the financing as "leasehold improvements, furniture, fixtures, inventory, and working capital." However, no funds were disbursed for the purpose shown. No loss or gain was incurred on the sale of the investments, and as of our examination date, the outstanding balance for the investment in Incredible was $370,000.

In addition to misclassification of the above sales, the licensee misclassified as "Loans to Small Business Concerns - Loans" (Account 170) an assignment of three notes to the licensee by Compobello Realty, a portfolio concern. In October 1986, the licensee made a $149,000 loan to Compobello. Compobello later experienced financial problems and, in January 1992, assigned the following three notes to the licensee in lieu of its regular loan payments:

Maker	Amount of Note Assignment	Outstanding Balance 11/30/92
R.& D. Lavender	$ 32,783	$15,536
M. Gilbertson	28,114	28,926
B.& J. Bruce	41,650	41,650
Total	$102,547	$85,112

The licensee, properly, did not report these three notes to SBA as financings.

In summary, the licensee has $1,251,564 of investments remaining on its books which were misclassified and should be recorded in account 220 "Notes and other securities received on sale of portfolio securities." In addition, the $85,112 remaining on the Compobello notes should be recorded in account 221 "Other securities received," in accordance with the SBA Chart of Accounts.

The licensee's president explained the licensee's actions, in selling existing investments and reporting them as new financing, in a written statement:

> Because of the poor economic conditions for this part of the country more and more SBCs who do business are required to place up assets or commercial surety in order to do business. The SBIC was able to provide this need along with working capital for SBCs by the use of other financings, thereby providing financings for more SBCs in furtherance of the Act.
>
> The reason some of the financings were reduced from the original outstanding balance [i.e. sold at a price less than the licensee's cost basis] to the new financing was because the board had valued them at that amount the year before [i.e. the sales price was based on the board's last portfolio valuation].

Licensee's Comments

Mr. Hale said he did not realize the financings were misclassified, and the same procedures were followed in making these financings as other financings. He further stated that he should have explained on the Form 1031 that the financings were transfers of assets.

Other Matters

The following observations are noteworthy items of information that are significant but have not been classified as findings.

Donated Capital

On September 30, 1992, Central Arkansas Community Development Corporation (CACDC) contributed to the licensee Medical Accounts Receivable in the amount of $11,523,782 and 470,737 shares of National Building Supply Stock which had a closing bid price of $4.75 per share ($2,236,000) as of September 30, 1992. The $13,759,782 contribution of the assets was to be Paid-in-Capital Surplus to the licensee.

Shortly thereafter, on October 8, 1992, the licensee applied for $6 million of preferred securities from SBA. By letter dated October 28, 1992, to the licensee, SBA denied the funding request because the licensee did not have the required regulatory capital. The donated capital, which was a non-cash contribution, could not be used for regulatory purposes. SBA also requested details on the donation from CACDC.

The licensee, in correspondence, provided SBA with information regarding CACDC and the nature of the Medical Accounts Receivable and the National Building Supply stock. The licensee argued that the donated assets should be allowed for leverage purposes. SBA, in a letter dated December 1, 1992, reiterated its position that the non-cash contribution cannot be used as regulatory capital, especially for leveraging purposes, until converted to cash.

The Medical Accounts Receivable were designated TMWB 006107726-1 and TMWB 00513527-122, dated September 18, 1992, from the Thompson Memorial Medical Center (located in California). The receivables consist of current accounts due from insurance companies, government payors, and/or patients for health care and related service.

We confirmed the receivables with the custodian, First Dominion Financial Group, Austin, Texas. First Dominion advised that the receivables were placed in the account in the name of Central Arkansas Community Development Corporation on September 29, 1992, but are now in the licensee's name and are free of any liens and encumbrances. The balance as of November 30, 1992 and January 29, 1993 was $11,523,782.

The National Building Supply stock contribution to the licensee was discussed in Finding 1.

We discussed the donation of the assets with Mr. Thomas W. Anderson, the licensee's vice president and president of CACDC.

Mr. Anderson said he would not discuss CACDC's source of the assets donated to the licensee, saying only that there are companies who are willing to donate funds for economic development. Mr. Anderson further stated that the receivables are guaranteed to stay at the present balance.

As of our examination date, the Medical Accounts Receivable were shown on the licensee's financial records as Other Receivables-Medical (asset) and Donated Capital (paid-in capital). However, the 470,737 shares of the National Building Supply stock have not been recorded. As a result, the licensee's financial records do not show assets and paid-in-capital as reported to SBA.

The licensee's president said that because of the possible tax question resulting from the trade, and SBA forcing the licensee to sell the stock acquired in the exchange of its investments with CACDC (529,263 shares--see Finding 1), a loss might result on the sale of the stock. Therefore, the board felt that the proper action, to best protect the SBIC, was not to record the donated portion (470,737 shares) of the stock.

Portfolio Valuations

The licensee continues to retain on its books of account financings which appear uncollectible, and/or where the small concern is no longer in business or its existence cannot be determined. If these financings were entirely reserved or written off, the licensee would have losses equivalent to about 32 percent of approved private paid-in capital. The following is our analysis of each of these financings:

Communication Company

In February 1986, the licensee made a $65,000 loan to the small concern. The loan balance, including accrued interest, as of our examination date was $61,990. The loan has been delinquent for three years with the last payment being made in July 1989.

The concern has filed for bankruptcy and the licensee has partially depreciated the loan by $12,189. Given the past history of the loan and the uncertain outcome of the bankruptcy, it would be more appropriate to fully depreciate the loan. Mr. Hale stated that the bankruptcy had just been filed at the time the loan was valued, and had not had the time to evaluate the situation. He further stated that the loan would be fully depreciated.

Monitor & Environmental Drilling (Monitor)

The licensee made a $75,000 loan to the concern in August 1989. In January 1991, the licensee refinanced the loan for $82,850 (included capitalized accrued interest and additional cash of $2,850). No payments have been made on the loan, and, as of our examination date, the loan balance was $82,850, plus accrued interest.

In 1992 the small concern went out of business and all assets were sold. The only security remaining on the loan was a personal guaranty from the principals. Although the licensee has depreciated the loan by $16,570, given the past history of the loan, no current financial statements to substantiate the value of a personal guaranty, and no other assets, the loan should be fully depreciated until substantial recovery has occurred.

Mr. Hale stated that the depreciated value was based on what the licensee could collect on the guaranty and he knows that the principals have personal assets. He further stated that he was waiting for the next interest due date before taking action.

Med-A-Corp

On February 12, 1991, the licensee acquired 29,400 shares of Med-A-Corp common stock for $408,750. In exchange for the stock, the licensee sold its investment in two concerns as discussed in Finding 2.

The licensee's files showed that the concern was located in El Paso, Texas. We obtained information from a credit report which showed the name was unknown to local authorities or directories, and the Texas Department of Revenue had no listing for the business. The concern supposedly develops medical software.

During the examination, we requested a telephone number for the concern in order to confirm the investment. Subsequent to our on-site examination date, the licensee's president provided a telephone number. However, when we called the telephone number, we learned it had been disconnected, and there was no listing in El Paso, Texas for Med-A-Corp.

Because we were unable to confirm the $408,750 investment and other circumstances regarding the existence and viability of the concern, we believe the equity investment may be worthless. Given these facts, we believe it would be more appropriate to fully depreciate the investment until the licensee can establish the viability of the concern.

In summary, the licensee's potential portfolio losses would amount to 32 percent of the licensee's private paid-in capital, calculated as follows:

Concern	Outstanding Investment
Communication Company	$ 61,990 (P) & (I)
Monitor	86,276 (P) & (I)
Med-A-Corp	408,750 (E)
Total unrecorded potential losses	$ 557,016
Realized Earnings 11/30/92 (offset)	- 102,225
Total as of 11/30/92	$ (454,791)
Paid-in-Capital as of 11/30/92	1,406,310
Potential losses as percent of capital	32%

(P) & (I) Principal and Accrued Interest
(E) Equity Investment

In addition to the above investments, we could not satisfactorily ascertain the viability of one concern, although we did speak to a person identifying himself as the principal (Autometrics, Inc.), and the loans to another concern may be overvalued (Castle Sewer/Southloop). These two investments are discussed below.

Autometrics, Inc.

As discussed previously in Finding 2, the licensee sold its investment in three portfolio concerns to Autometrics, Inc., for $330,000. In exchange, the licensee received a $150,000 note and acquired 490 shares of Autometrics' common stock for $180,000. These were also the outstanding balances as of the examination date.

Autometrics, according to the background information in the financing file, was involved with the brokerage and restoration of exotic and collectable automobiles. The licensee's financing files showed that Autometrics was located in Nixa, Missouri. We obtained information from a credit report which showed the name was unknown to local authorities, and none of the local or state authorities had any record on the business. The licensee's files, however, did contain a financial statement dated July 1, 1992, showing net worth of $852,271.

Because the financing file did not contain a telephone number for the concern, we requested the concern's telephone number from the licensee's president. Subsequent to our on-site visit of the licensee, the telephone number was provided, and we attempted to contact the concern. However, when we called the telephone number, we reached a recording which did not identify the business, person, or the telephone number. We left a message

informing the person of the nature of our call and a request to return our call. On February 18, 1992, Mr. Harry Howard, who represented himself to be the concern's principal, returned our call and verbally confirmed the investment.

Because we were unable to confirm the licensee's investment in the concern from outside sources, we have no assurance as to the concern's viability as an on-going concern, except for the discussion with Autometrics' principal.

Castle Sewer and Water Corporation (Castle)
Southloop Construction Company (Southloop)

The licensee made a $150,000 loan to Castle in February 1987, and a $100,000 loan to Southloop in October 1987. Southloop is a wholly owned subsidiary of Castle. As of our examination date, the loan balances, including delinquent interest, were $227,398 and $155,870, respectively. The loans have been delinquent for about three years, no payments have been made since June 1990, and interest continues to accrue on the loans. The loans have not been depreciated.

The reason for not depreciating loans, according to the licensee's president, was the concern's strong collateral position. According to an August 1990 appraisal, the water and sewer system had a value of $1,542,641. The licensee held a second lien mortgage position behind the first lien holder (Madison Savings and Loan Association, which failed). The first lien holder's loans are now held by the Resolution Trust Corporation (RTC).

The concern's 1991 tax return showed total "mortgages, notes, bonds payable in 1 year or more" of $659,878. Based on the appraisal and the outstanding mortgages, there seems to be sufficient collateral, if assets were sold. However, the assets were not being sold and collateral alone should not be the determining factor for valuing loans which are three years delinquent.

Mr. Hale said he knows that he will be able to collect the loans because he knows the people and the concerns' operation. Also, no payments have been made because of the concerns' problems with the RTC due to the failure of the first lien holder, and payments will be made once the problems are resolved. He further stated that he did not want to depreciate the loans because of the tax consequences.

We believe that the licensee should consider the delinquency factor and depreciate the loans, by some amount, to reflect the collection problems. The licensee cannot be certain that it will be able to collect 100 percent of the loans.

EXHIBIT 1

CAPITAL MANAGEMENT SERVICES, INC.
Unaudited Comparative Balance Sheet

Assets	As of Dates 11/30/92	11/30/90
Loans and Investments		
Loans	$ 1,048,113*	$ 2,843,297
Debt securities		
Equity interests	1,191,740*	1,419,270
Assets acquired in liquidation		67,594
Notes and other securities		
Unrealized appreciation (net of depr.)	(28,759)	(160,156)
Total	$ 2,211,094	$ 4,169,005
Cash	$ 20,136	$ 8,582
Invested idle funds	31,090	202,403
Receivables and accrued items	182,600	543,869
Other Receivables	14,037,781**	
Other assets	15,881	27,820
Total Assets	$16,498,582	$ 4,945,675
Liabilities and Capital		
Liabilities		
Debentures payable to or guaranteed by SBA	$ 2,000,000	$ 2,000,000
Accounts payable and accrued items	52,170	64,479
Other liabilities	42,854	550
Total Liabilities	$ 2,095,024	$ 2,065,029
Capital		
Capital stock and paid in surplus	$12,930,092	$ 1,406,310
Preferred stock issued to SBA	1,400,000	1,400,000
Unrealized gain (loss) on securities held	(28,759)	(160,156)
Undistributed realized earnings	102,225	234,492
Total Capital	$14,403,558	$ 2,880,646
Total Liabilities and Capital	$16,498,582	$ 4,945,675

* The licensee's accounts are misclassified, as discussed in Finding 2.

** Account balance includes: (1) stock acquired in exchange for investments in small concerns, and (2) Medical Accounts Receivable donated to the licensee.

NOTE: Prepared from trial balances provided by the licensee.

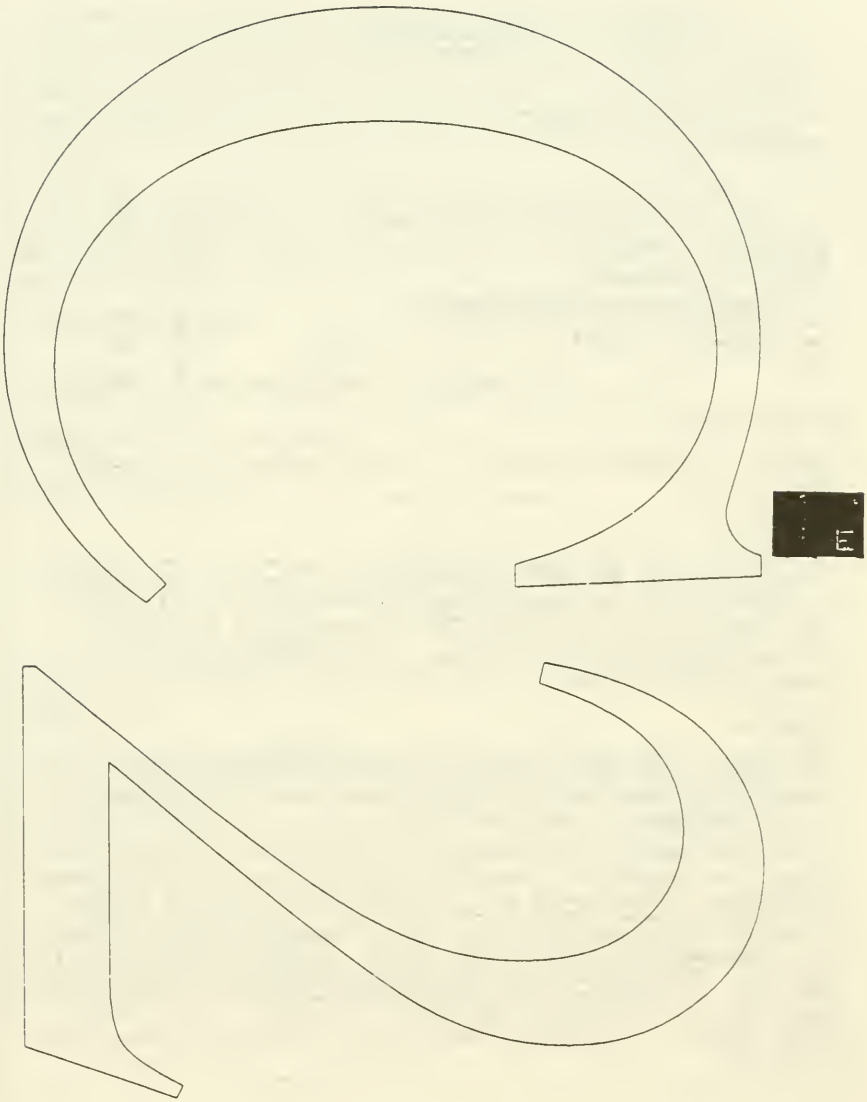
EXHIBIT 2

CAPITAL MANAGEMENT SERVICES, INC.

SCHEDULE OF OFFICERS, DIRECTORS AND SHAREHOLDERS

NOVEMBER 30, 1992

	Common Stock Shares	Percent
David L. Hale, president and director	2,150	76.8
Thomas W. Anderson, vice president, assistant secretary, chief financial officer and director		
James Hall III, treasurer and director		
George S. Ivory, Jr., secretary and director		
Linda Sue Hale, shareholder	325	11.6
Hazel D. Dennis, shareholder	250	11.6
Total shares issued and outstanding	2,300	100.0



SUITE 200 • 1410 NORTH GRANT
LITTLE ROCK ARKANSAS 72207
501 664-8813

April 20, 1993

APR 23 1 02 PM '93
U.S. SMALL BUSINESS ADMIN.
INVESTMENT DIVISION

Mr. Joseph L. Newell
Director
Office of Investment
U. S. Small Business Administration
409 3rd Street, S.W. -8th Floor
Washington, D.C. 20416

Re: Response to your letter dated 3/26/93

Dear Mr. Newell:

This is the response, containing 33 pages, to your letter dated March 26, 1993.

Finding 1

As you requested and as we have previously agreed to reverse the transactions with the CACDC we have enclosed copies of the documents to reverse, also, facsimile transmitted on April 14, 1993. Upon your approval of the documents and the execution of same should meet the requirements of Finding 1. Also please find enclosed the resignation of Thomas Anderson as Vice-president and Board member of the Licensee.

Finding 2

The licensee vigorously denies any misrepresentation. This is absolutely absurd since previous audit made no such finding. The inconsistency where one audit approves and the next disapproves is causing irreparable harm to the licensee.

Your letter refers to these financings as "Sales" or "Trades". There is no document or evidence of a Sale or Trade in any of these financings. The documents are "LOAN AGREEMENTS AND STOCK PURCHASE AGREEMENTS" between "Lendor" and "Borrower". The definition of "Sale" or "Trade" as used by the Courts, Commercial and Governmental Laws throughout the United States are to constitute a "Sale" there must be parties standing to each other in relation of "Buyer" and "Seller". A "Sale" is a contract between two parties, called, respectively the "SELLER" and the "BUYER". "TRADE", is not a technicial word and is ordinarly used in that of exchanging commodities by barter.

To be consistant in your interpertation that ONLY CASH may be used in ANY and ALL assistance to disadvantaged small concerns, for example it would require an SSBIC to place up ONLY CASH when guaranting a loan, contract, bond or any other assistance. If this is your interpertation then it should be placed in writing and made a part of the rules and regulations where congress and other interested parties may have the opportunity to comment on such interpertation.

The meeting of February 19, 1993 I indicated to you that it was the board's position that these financings were in keeping with your policy that all SSBIC financings should be cash equivalent and that the board felt this would put the licensee in a better position towards those ends.

Communication Company - The board advised the auditor that full depreciation was it's intent. The board agrees.

Med-A-Corp - This financing has been satisified in full.

Autometrics - See Attachments

Castle Sewer and Water Corp. -
Southloop Construction - See attachments

Interest will no longer be accrued on these loans. we take your letter as a directive from SBA although this may create certain legal problems for the licensee in protecting its' position.

Arkansas is located in the Mississippi Delta Region designated by the United States Congress as one of the nations's most econcomically stressed areas.

The average Arkansas disadvantaged small concern has a gross annual income of less than $50,000.00. Your new reporting requirements will cost the typical, small disadvantaged business between $3,250.00 and $5,000.00 a year to comply. In Arkansas this means the typical disadvantaged concern must spend from 15% to 20% of its gross income on compliance. This eliminates most Arkansas disadvantaged concerns form participating in the program.

While complex and expensive reporting requirements may be justified for large business concerns, they are totally inappropriate for the small disadvantaged business. The board feels that this is just another example of systematic discrimination that is keeping disadvantaged concerns from receiving financial assistance.

We have enclsoed a graph that will issustrates SBA's record with minority firms over the past decade. There is no doubt that SBA financings shifted to larger, less reacially diverse firms during this period.

In the past two years your reporting requirements for the SSBIC of the small concerns has increased the licensee's expenses from $2,700.00 per year to maybe as high this year of $30,000.00. The tacit message in this shift is to shift funding toward larger, more successful concerns: In other words, abandon the SSBIC mission.

The SSBIC's charge under the ACT to financially assist Disadvantaged Small Concerns who may be deprived from participating in the Free Interprise System is being selectively destroyed.

Capital-Management Services, Inc.

By _____
President

AGREEMENT OF REVERSAL
April 13, 1993

On or about June 1, 1992, an assignment was enter into by and between Capital-Management Services Inc., an Arkansas Corporation hereinafter known as "Capital" and Central Arkansas Community Development Corporation, an Arkansas not for profit corporation hereinafter known as "CACDC" whereby CACDC would assign and transfer to Capital $2,514,000.00 in publicly traded stock of at least NASDAQ quality in exchange for certain assets held by Capital as more specially set out in the Assignment attach hereto and marked "Exhibit A" and made a part hereof by reference .

That on September 30, 1992, CACDC did infact transfer to Capital 529,263 shares of National Building Supply Stock at $4.75 a share. Both parties have held their respective assets intact as transferred.

It is the desire and agreement of Capital and CACDC that this transaction be reversed, Capital hereby transfers 5,293 shares of National Building Supply stock to CACDC and CACDC hereby assigns and transfers all assets as more specially shown in Exhibit A to Capital.

IN WITNESS WHEREOF, the parties hereto have executed and entered this Agreement the date first above written.

CENTRAL ARKANSAS COMMUNITY DEVELOPMENT CORPORATION

BY: _____
President

CAPITAL-MANAGEMENT SERVICES, INC.

BY: _____
Presidentn

AGREEMENT OF REVERSAL
April 13, 1993

On or about September 30, 1992, a Contribution Agreement was enter into by and between Capital-Management Services Inc., an Arkansas Corporation hereinafter known as "Capital" and Central Arkansas Community Development Corporation, an Arkansas not for profit corporation hereinafter known as "CACDC" whereby CACDC would contribute to Capital 470,737 shares of National Building Supply stock and medical accounts receivable as designated as TMWB 006107726-1 and TMBW 00513527-122 dated September 18, 1992.

It was the hope and desire of the CACDC, with the approval of SBA, that Capital would be able to sell the assets for cash and use those funds for financial assistance to the disadvantaged small businesses within the Mississippi Delta Region.

It is the agreement of Capital and CACDC that this transaction be reversed. Capital hereby transfers 470,737 shares of National Building Supply stock and medical accounts receivable as designated as TMWB 006107726-1 and TMBW 00513527-122 dated September 18, 1992 to CACDC and CACDC hereby acknowledges and accepts said assets as is of September 30, 1992.

IN WITNESS WHEREOF, the parties hereto have executed and entered this Agreement the date first above written.

CENTRAL ARKANSAS COMMUNITY DEVELOPMENT CORPORATION

BY: _____
President

CAPITAL-MANAGEMENT SERVICES, INC.

BY: _____
President

THOMAS W. ANDERSON
8604 W.H Burges
El Paso, Texas 79925
(915) 772-6606

March 29, 1993

David L. Hale, President
Capital-Management Services, Inc.
1910 North Grant
Little Rock, Arkansas 72207

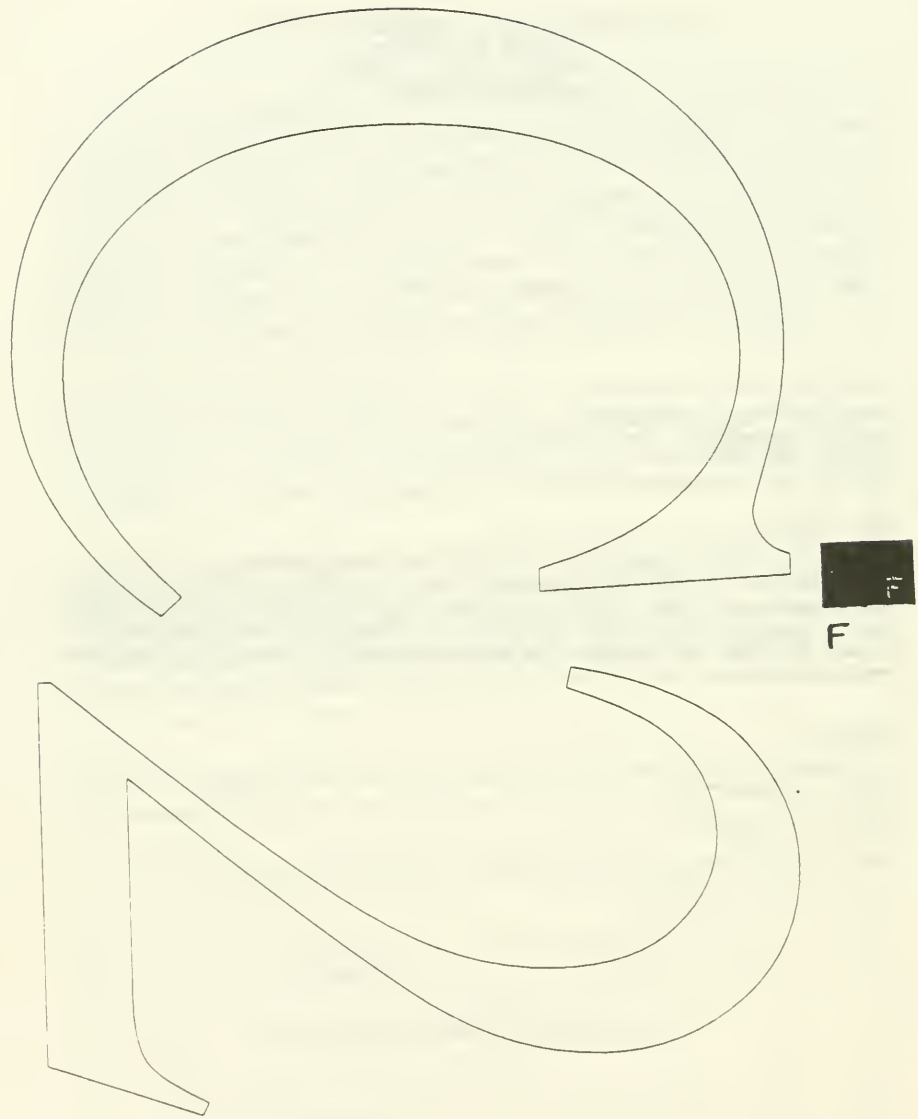
Dear David:

It is with regret that I submit my resignation as an officer and director of the corporation. This submission is due to the fact that most of my time is now spent out of the area and I do not feel I can not positively continue to commit to the organization. I have enjoyed my association with the organization and wish you much success.

Sincerely,

Tom Anderson

Thomas W. Anderson


F

CAPITAL MANAGEMENT SERVICES, INC.
LITTLE ROCK, ARKANSAS
License No. 06/06-5207

SUMMARY:

- Non-cash assets were contributed to CMS as a capital contribution that were represented to be free and clear of liens and encumbrances. It is questionable as to whether this representation was correct. CMS attempted to obtain leverage from SBA based on this increase in capital.

- Licensee transferred certain assets to an associate in exchange for stock which was represented to be non-restricted stock listed on NASDAQ. The stock is restricted and not listed on NASDAQ. The value of this stock is questionable.

- We have attempted to obtain the source of the donated assets without success. Therefore, the matter has been referred to the Inspector General for investigation.

BACKGROUND:

- CMS is a Specialized SBIC that was licensed on 3/14/79 and it has $1.4 million in private capital and $3.4 million in SBA leverage.

- In June 1992, Licensee initiated two non-cash transactions with an associate (Central Arkansas Community Development Corporation) which were not consummated until September 1992:

  - It accepted a pool certificate backed by medical receivables valued at $11.5 million and National Building Supply (NBS) stock valued at $2.3 million as a contribution of non-cash assets which was represented as an increase in private capital.

  - Licensee received NBS stock valued at $2.5 million for certain assets held by the Licensee which were reported by the Licensee to be of comparable value.

- In October 1992, Licensee applied for $6 million of leverage in the form of preferred stock based on the capital increase consummated in September 1992.

- On December 8, 1992, Licensee:

  - Was reminded that, as a matter of policy, SBA does not leverage capital contributed in the form of non-cash assets until such assets are converted to cash.

- Was advised that an examination of the Licensee's operations would be needed before any leverage could be provided.

- Was advised that approval of disposition of assets to an associate would be conditioned on the Licensee converting the NBS stock into $2.5 million of cash within 120 days.

- Was advised that the $6 million leverage application was being returned.

o On December 9, 1992, SBA agreed to accept a $1.4 million leverage application based on the licensee's representation that:

  - the medical receivables were free and clear of liens and encumbrances and

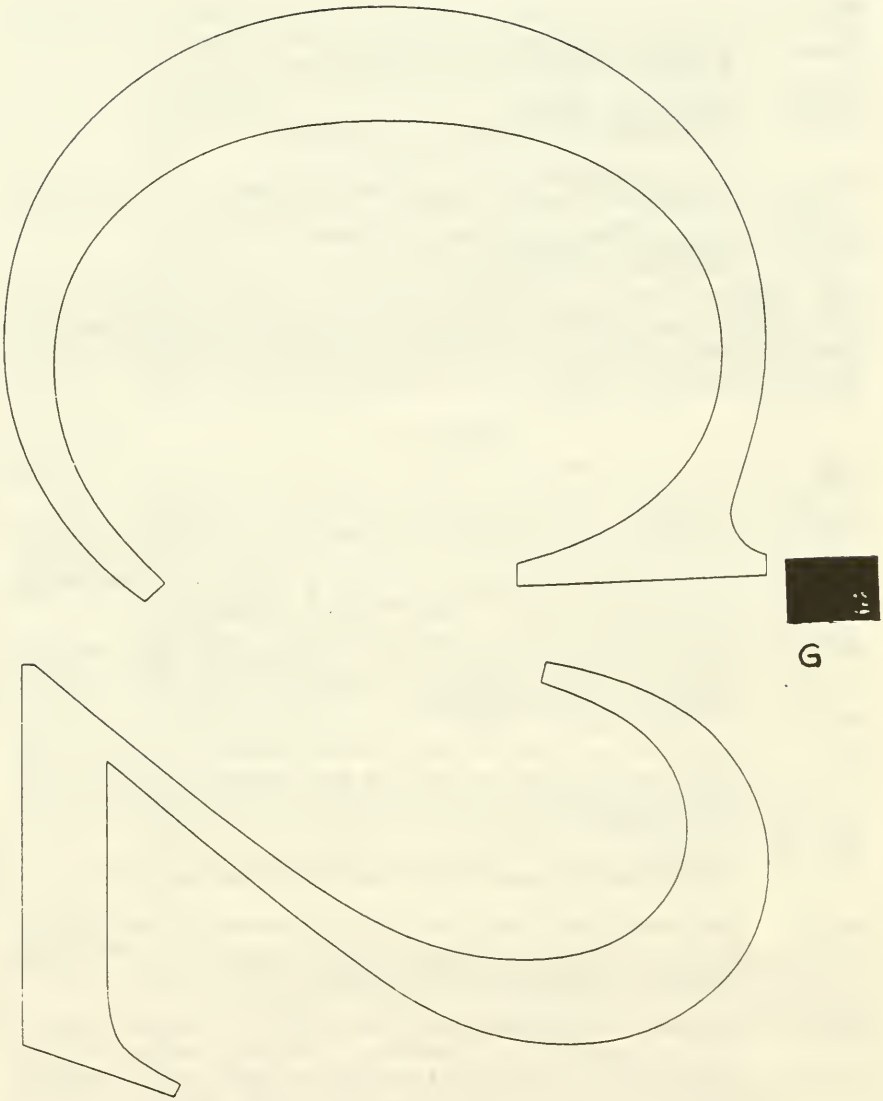
  - the licensee would dispose of the NBS stock received in exchange for Licensee assets within 120 days.

o On March 11, 1993, the Examination report on the Licensee was issued. Among other things, the examiner was not able to determine the source of the donated assets. The examiner reported that there was a reluctance on the part of the Licensee's management to disclose any information concerning the source of the donated assets.

o On March 26, 1993, an examination letter was sent advising the Licensee of the results of the examination and stating that the leverage application would not be processed until the regulatory matters were resolved. The letter also provided the Licensee another opportunity to explain the source of the non-cash assets.

o On April 23, 1993, SBA received the Licensee's response to the Examination letter. Answers to questions concerning donated assets were not provided. Instead, the Licensee stated that they would reverse the transactions and that no explanation should be necessary.

o On May 5, 1993, the matter was referred to the Office of Inspector General for investigation with the expectation that the source of the contributed assets will be identified. Licensee was advised that they were not responsive to the examination letter and that the matter had been referred to the Inspector General.


G

DATE:

TO: Joseph L. Newell
Director, Office of Investment

THRU: Phyllis E. Dawson
Chief Area II, Office of Investment

FROM: Walter Peterson
Financial Analyst, Office of Investment

SUBJ: Capital Management Services, Inc.
License No: 06/06-5207

This memorandum is to provide a chronology of events regarding the above SSBIC's application to SBA for preferred stock leverage and the subsequent referral of this matter by the Investment Division on May 5, 1993 to SBA's Inspector General (IG) for an investigative evaluation.

CHRONOLOGY

1993

May 5 Following a review of this matter by SBA's Acting Administrator, a letter is sent to the licensee setting forth SBA's decision to refer the matter to SBA's IG for an investigative evaluation and a memorandum requesting such an evaluation is transmitted to the IG.

April 23 The Office of Investment (OI) receives a letter from the Licensee responding to OI's examination letter dated March 26, 1993. Answers to questions concerning donated assets are not provided.

April 19 SBA sends a letter to the Licensee stating it is willing to review and comment on the agreements of reversal in connection with our review of the Licensee's response to OI's examination letter of March 26, 1993.

April 14 Licensee sends to OI a facsimile transmittal of unexecuted agreements of reversal for SBA approval.

April 7 The Associate Administrator for Investment sends a letter to Ms. Kathy D. McCoy responding to her request to President Clinton for assistance concerning financing from an unidentified SBIC in Arkansas.

April 1 Peterson telephones Ms. McCoy to inquire as to the status of her search for financing. In the course of the conversation certain statements are made which suggests that the assets donated to the Licensee are not free and clear of encumbrances as has been represented by the Licensee in its leverage application.

March 26 OI sends to the Licensee an examination letter and a copy of SBA's Examination Report dated March 11, 1993 for the 24-month period ended November 30, 1992. OI's letter stated that the Licensee's March 9th plan was not acceptable and OI is withdrawing the Licensee's application for $1.4 million of preferred stock leverage until the regulatory issues are resolved.

March 11 The Acting Director of SBIC Examinations sends an Examination report on the Licensee to OI. The transmittal letter states that "We believe the donation and exchange of assets raises serious questions, such as potential conflict of interest transactions, which we could not pursue because of Mr. Anderson's refusal to answer our questions regarding CACDC's source of the stock and accounts receivable. Without additional information, we believe the potential for undisclosed material facts exists in the transactions, including the potential for illegal activity."

March 9 A letter from the licensee to SBA dated March 9, 1993 indicated that the licensee intends to sell, with SBA approval, National Building Supply stock and medical accounts receivable over a period of six to eighteen months.

Feb. 19 David Hale, president of CMS met with Wayne Foren, Ned Shepperson, Joseph Newell, Phyllis Dawson, and Walter Peterson of the Investment Division at SBA headquarters. The purpose of the meeting was to discuss the licensee's leverage application and the concerns which have been raised as a result of processing that application as well as those which have developed in the course of a recent SBA examination.

Hale stated that he wanted to reverse the disposition of assets to an Associate (the NBS transaction) and donated capital transaction in an orderly fashion. Hale was told to send a letter to SBA for our approval of the licensee's plan to reverse the transactions.

1992

Dec. 18 A confidential memorandum outlining certain transactions which should receive special attention was sent from OI to the examiner in the San Francisco District Office who would be responsible for the forthcoming examination of the Licensee.

Dec. 9 The licensee submitted an application for $1.4 million of preferred stock leverage.

Dec. 9 OI sent a letter to the licensee agreeing to accept a fully executed leverage application package subject to the understandings that the medical accounts receivable transferred to the licensee from Central Arkansas Community Development Corporation ("CACDC") are free of liens and encumbrances and the licensee would dispose of certain assets received from an Associate for cash within 120 days.

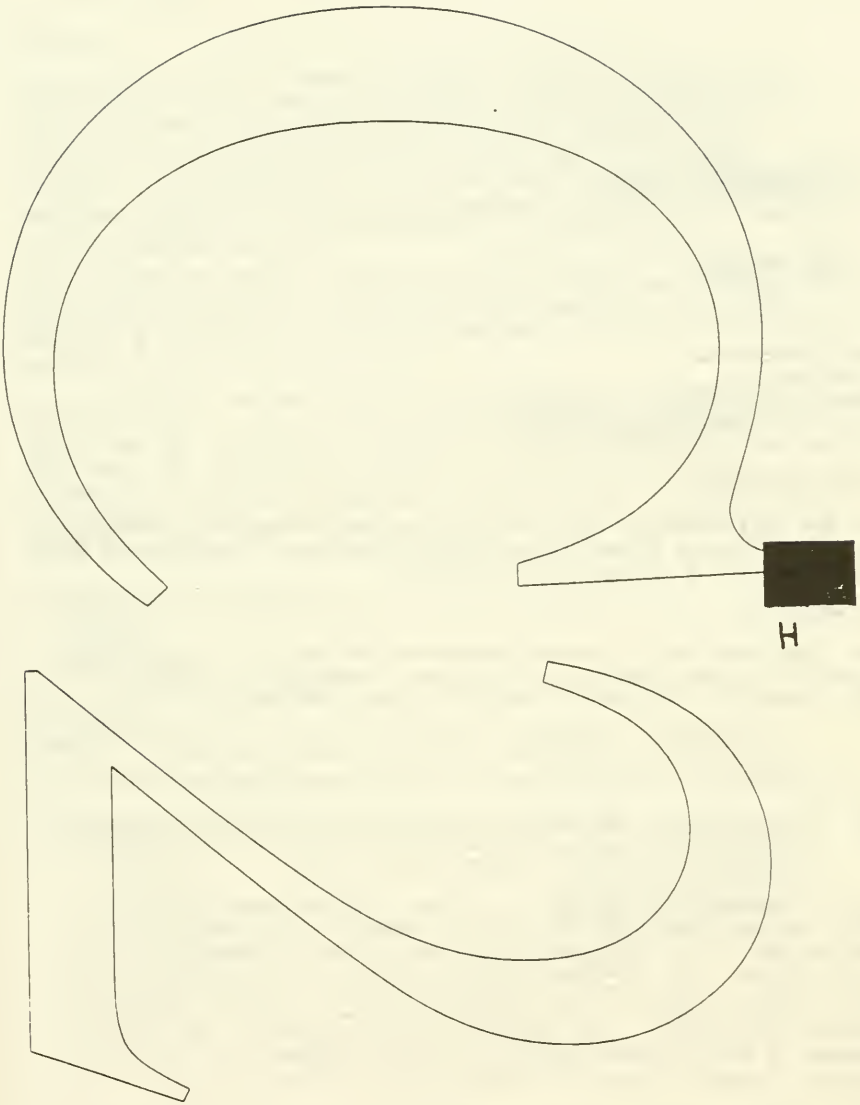
Dec. 9 Meeting at SBA with James Hall III, director of Capital Management Services. Present from SBA: Foren, Klapp, Dawson and Peterson. Capital Management's preferred stock application for $1.4 million was discussed. Foren repeated that it is SBA policy not to leverage non-cash assets. A new examination is required because the last exam is two years old.

Dec. 8 OI sent a letter to the licensee concerning $13.8 million of assets donated to the Licensee stating the assets would not be recognized for regulatory capital purposes until converted to cash, and approval of the disposition of assets to an Associate was conditional on these assets being converted to cash within 120 days. OI again returned the $6 million application for preferred stock leverage because of insufficient private capital.

Dec. 1 OI sent a letter to the licensee again returning its preferred stock application because the licensee does not have the requisite amount of regulatory capital for $6,000,000 of additional leverage.

Oct. 28 OI returned the preferred stock application to the licensee because it did not have the requisite amount of regulatory capital for $6,000,000 of additional leverage. The licensee was also asked to supply certain information concerning donated assets.

Oct. 15 Licensee files an application of $6.0 million of preferred stock leverage.


H

INV 6-1-1

BY FACSIMILE AND MAIL

MAY 5 1993

LICENSE No. 06/06-5207

Mr. David Hale
President
Capital Management Services, Inc.
1910 North Grant, Suite 200
Little Rock, Arkansas 72207

Dear Mr. Hale:

We are in receipt of your letter dated April 20, 1993, responding to SBA's letters dated March 26, 1993 and April 19, 1993. In this regard, we have the following comments:

Finding 1

You submitted the following agreements between the licensee and Central Arkansas Community Development Corporation (CACDC) for SBA's approval in order to meet the requirements of Finding 1:

1. An unexecuted "Agreement of Reversal" between the Licensee and CACDC with respect to a "Contribution Agreement" executed by such parties on or about September 30, 1992.

2. An unexecuted "Agreement of Reversal" between the Licensee and CACDC with respect to an "Assignment Agreement" executed by such parties on or about June 1, 1992.

As we indicated in our letter to the Licensee dated April 19, 1993, SBA would review the above agreements in connection with our review of the Licensee's response to SBA's examination letter of March 26, 1993. However, we are unable to review these agreements, because the Licensee's letter of April 20, 1993 did not include answers to the questions raised in our examination letter of March 26, 1993 under Finding 1 concerning the 1,000,000 shares of National Building Supply, Inc. common stock and the donated medical accounts receivable ($11,532,782).

Furthermore, despite repeated requests from SBA, the licensee has been unwilling to provide a full explanation regarding the issues raised in the Examination Report under Finding 1. Consequently, this matter has been referred to SBA's Inspector General for an investigative evaluation.

Finding 2

Acceptance of the licensee's argument that the transactions referred to in the Examination Report should not be recorded as "Notes and other securities received on sale of portfolio securities" requires proof that "financial assistance" was provided to the small business concerns. SBA is willing to review evidence which demonstrates that the small business concerns have used the portfolio securities in question to promote their growth, expansion and modernization, as contemplated by the Act.

The licensee's letter of April 26, 1993 states, with respect to Med-A-Corp, that "This financing has been satisfied in full." Please provide SBA with copies of the documents showing terms, conditions and dates of such satisfaction including proof of bank deposits for any cash received.

Our examination letter request, that interest no longer be accrued on the Castle Sewer and Water/Southloop Construction loans, was not intended to create legal problems for the licensee. The request was intended to avoid full income recognition on a delinquent loan. The licensee is able to maintain an interest receivable on its books by following the instructions in Appendix II to Part 107 - Chart of Accounts for SBICs (see account Nos. 143 and 144).

Please direct any questions regarding these matters to Walter Peterson at 202-205-7594.

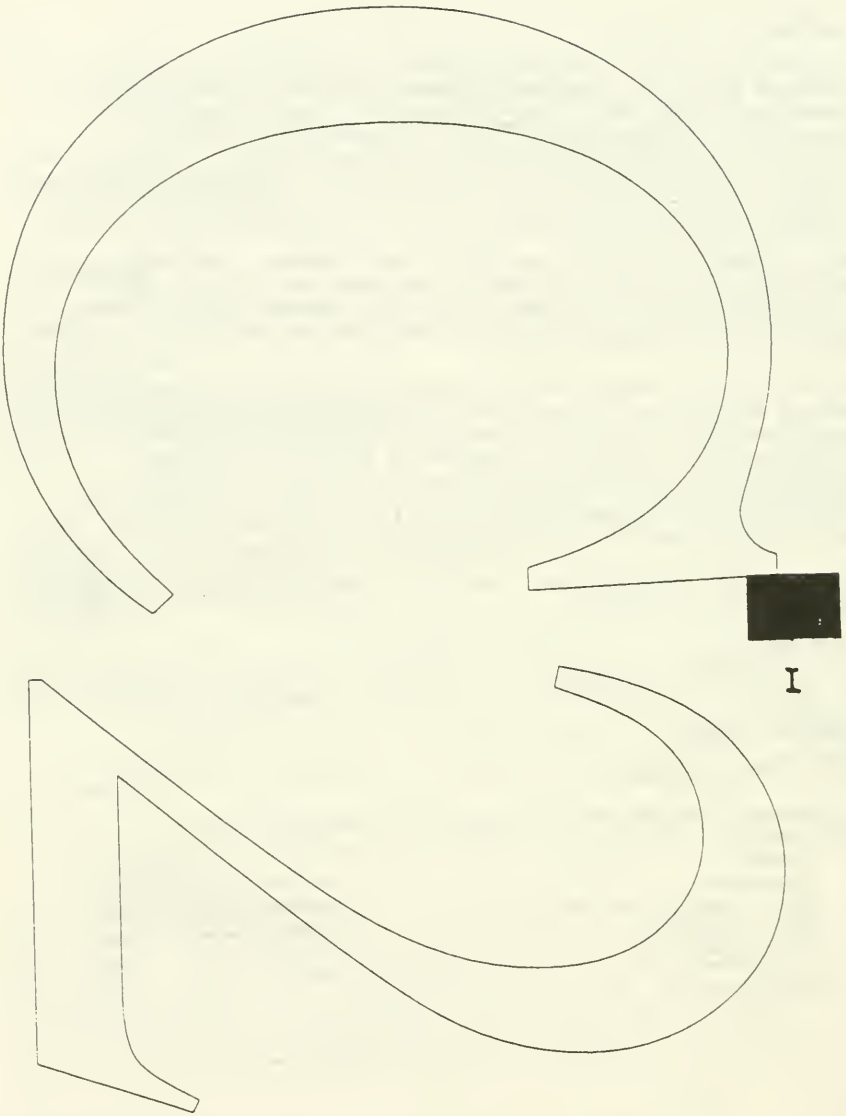
Sincerely,

Joseph L. Newell

Joseph L. Newell
Director
Office of Investment

OI:Peterson/5/3/93:final:mjg:5-3-93:revised:mjg:5-3-93
cc: Area II
INV-6-7-1
Peterson
OIG - Mail Code 4112
OE - Chestnut
OE - Campbell
Code D-19
S:cmsaud7.wp

Peterson wp 5/4/93
Dawson [illegible] 5-3-93



CAPITAL MANAGEMENT SERVICES, INC.
1910 N. GRANT
LITTLE ROCK, AR 72207

TELECOPIER TRANSMITTAL INFORMATION SHEET

DATE May 5, 1993

NUMBER OF PAGES(INCLUDING COVER) 2

TO: Mr. Joseph L. Newell

COMPANY: U. S. Small Business Administration

TELECOPIER # (202) 205-6959 VOICE # (202)205-6510

FROM: David L. Hale, President

COMPANY: Capital-Management Services, Inc.

TELECOPIER # (501).664-6302 VOICE # (501) 664-9813

MESSAGE:

THE INFORMATION CONTAINED IN THIS TELECOPY IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE AND MAY CONTAIN INFORMATION THAT IS CONFIDENTIAL, PRIVILEGED, AND/OR OTHERWISE EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF YOU ARE NOT THE INTENDED RECIPIENT YOU ARE NOT AUTHORIZED TO THIS TRANSMITTAL AND HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. THIS TRANSMISSION IS NOT INTENDED TO WAIVE ANY CONFIDENTIAL OR PRIVILEGED RELATIONSHIP. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS.

CAPITAL-MANAGEMENT SERVICES, INC.
SUITE 200 • 1910 NORTH GRANT
LITTLE ROCK, ARKANSAS 72207
501/664-4813

May 5, 1993

Mr. Joseph L. Newell
Director
Office of Investment
U.S. Small Business Administration
409 3rd Street, S.W. -8th Floor
Washington, D.C. 20416

Re: Your letter dated May 5, 1993

Dear Mr. Newell:

I am shocked at your letter under Finding 1. In our meeting of February 19, 1993 you specifically stated that the reversal of the transaction would satisify SBA in full. In futher conversations with you office it was explained that this was the intent of the SBIC, however, we wanted your office to approve the documents, as you requested, before the reversal was made. We mailed you copies of the proposed documents and on April 19, 1993 you indicated both by letter and telephone that this was the right course of action and if we intended to keep or sell the assets for cash then the additional information would be needed.

It was our total understanding that this reversal would satisify Finding 1. If you wish the additional information as set out in your letter of March 26, 1993 we will provide you with the information as to the best of our abilities by May 12, 1993. Should certain information be unavaliable to us then we will seek your guidance.

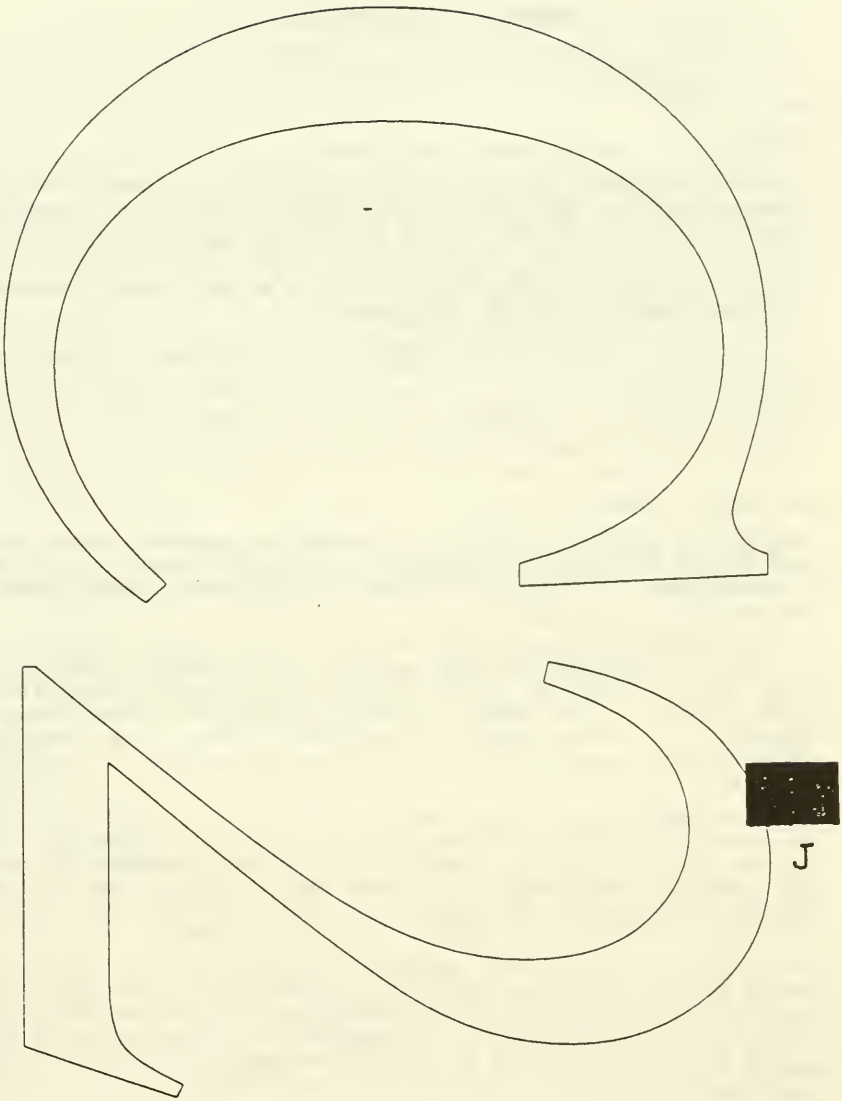
You state in your letter of May 5, 1993 that "despite repeated request from SBA, the licensee has been unwilling to provide a full explanation regarding the issues raised in the Examination Report under Finding 1". Please furnish to us, if possible by fax today, copies of written request or other documentation that repeated request has been made for any information since the issues were raise in your letter of March 26, 1993 concerning Finding 1. We are unable to located or remember any such request. The only written communication from your office since the March 26, 1993 letter that we are able to locate is the letter dated April 19, 1993.

We want to provide you with any and all information that we have avaliable and cooperate with you in every way and as I have explained to Mr. Walter Peterson we want you to approve our every step and that we have the full understanding between the SBIC and SBA. Our goal and intent to to do everything that you want us to do. We appoligize if there has been any misunderstanding, however, we want to emphize that we thought that we were doing everything that you requested.

Capital-Management Services, Inc.

By _____
President

Federal Licensee under the Small Business Investment Act of 1958


J

PERSONAL & CONFIDENTIAL

May 13, 1993

Wayne,

I spoke with David Hale at 1:00 today regarding the tentative Arkansas trip to meet with the Governor, Arkansas Development Finance Authority (ADFA) and one other group that David couldn't remember plus any other group you feel should be at the discuss of the SBIC Program and the "Community Banking" concept. David would like to know when we expect to arriving so he can confirm the time with the Governor and other attendees.

There is only one contract carrier to and from Little Rock available June 3, 1993.
Washington/Dulles (7.10am) via St. Louis to Little Rock (10:31am)
Depart Little Rock (6:00pm) via St. Louis to Wash/Dulles (11:02pm)

For Your Information:

After David and I finished our conversation regarding the Little Rock trip he told me of his recent SSBIC audit, conversations and correspondence with Walter Peterson, Marvin Klapp, Joseph Newell and you.

If I understood what David said, 'we have shut his SSBIC down'. It all started when Tom Anderson, Manager of his SSBIC approached a group from England who is involved in Factory Built Homes among other things. The group took $15 million of their assets consisting of stock, medical receivables etc., from American companies and invested them into Tom Andersons CDC, "no strings attached".

Tom received a legal opinion from a Little Rock law firm stating that under SSBICs Rules and Regulations it would be acceptable for him to 'donate' "surplus assets" to the SSBIC managed by Tom. Acting on that legal opinion, Tom took the $15 million surplus from his CDC, made a gift or donation to the SSBIC with no strings attached, no exchange of stock, ownership, management or control.

David came to Washington, spoke to Marvin Klapp who agreed to accept the $15 million as the SSBICs private capital providing the assets are sold and converted to cash prior to leverage, he argued but our decision was final. He consented to our decision and was in the process selling the assets when he meet with you and Joseph Newell who told him the assets are not acceptable and to reverse the entry.

During subsequent conversations with our office Walter Peterson told him not to sell the assets or reverse the entry. Then, our examiners did an audit, asked Tom Anderson questions that he felt could not be answer without the approval of the England group and everything is now at a stand still.

He said several letters have been written regarding the transaction and by him putting everything back the way it was is no longer acceptable to us until he answers all the questions regarding the 'donation'. He said he has provided us with all the information he has and simply wants to know what else we want him to do.

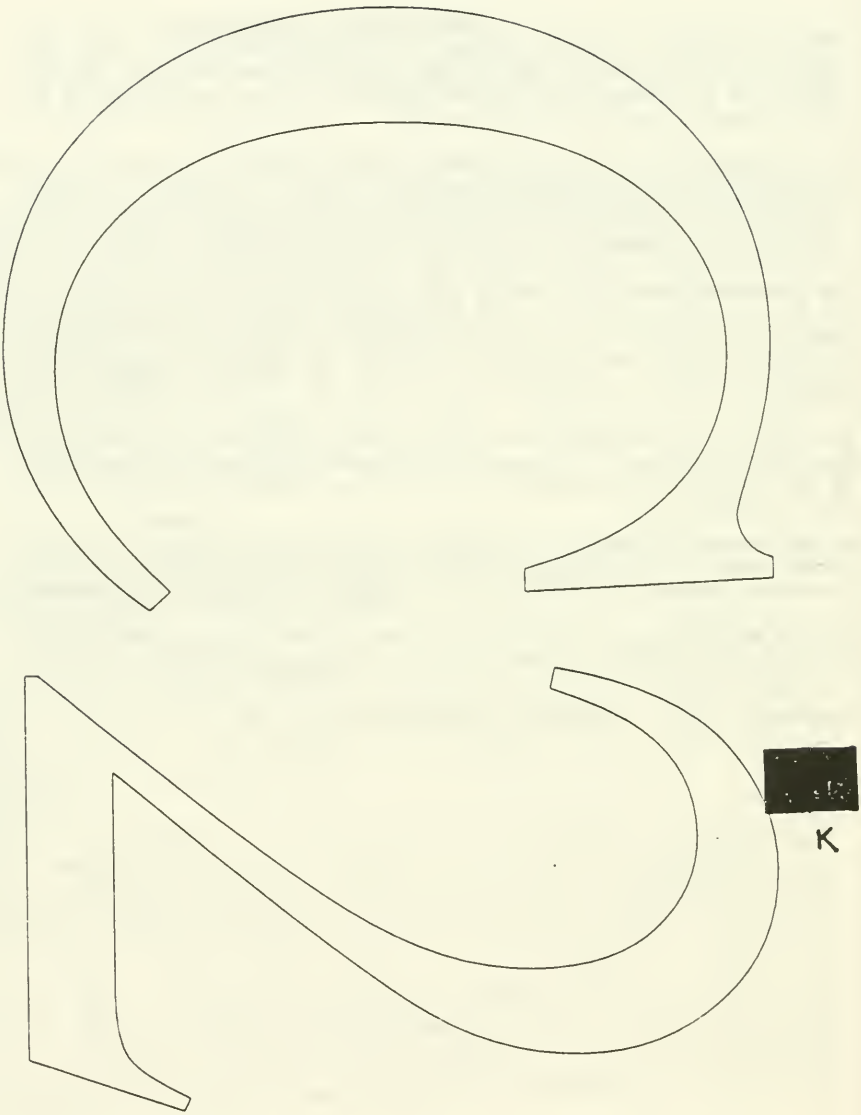
He recently sent us a letter and did not receive a reply. He called our office, Walter told him we were reviewing his letter and would get back to him. He wrote a second letter with no response, called for Joseph Newell and was transferred to Walter and received the same answer. According to David, no one has returned his calls.

He told me that Joseph Newell and Walter Peterson both spoke with the 'England group', he gave us their names, address and everything he has and still we referred this to the Inspector Generals Office for investigation.

He has other investors interested in his SSBIC however, he can't enter into a contract with this investigation pending and he's unable to reverse the $15 million transaction or sell the assets.

His major concern is taking a loss on the $15 million during this holding period which he could be liable for an undetermined amount of money, not to mention the loss his SSBIC is facing.

David ask that I share this information with you.


K

CAPITAL MANAGEMENT SERVICES, INC.
LITTLE ROCK, ARKANSAS
License No. 06/06-5207
May 19, 1993

SUMMARY:

- Non-cash assets were contributed to CMS as a capital contribution that were represented to be free and clear of liens and encumbrances. It is questionable as to whether this representation was correct. CMS attempted to obtain leverage from SBA based on this increase in capital.

- Licensee transferred certain assets to an associate in exchange for stock which was represented to be non-restricted stock listed on NASDAQ. The stock is restricted and not listed on NASDAQ. The value of this stock is questionable.

- We have attempted to obtain the source of the donated assets without success. Therefore, the matter has been referred to the Inspector General for investigation.

- CMS did not make interest payments on two debentures. The Investment Division is scheduling a pre-liquidation meeting for May 21 at 10:00.

BACKGROUND:

- CMS is a Specialized SBIC that was licensed on 3/14/79 and it has $1.4 million in private capital and $3.4 million in SBA leverage.

- In June 1992, Licensee initiated two non-cash transactions with an associate (Central Arkansas Community Development Corporation) which were not consummated until September 1992:

  - It accepted a pool certificate backed by medical receivables valued at $11.5 million and National Building Supply (NBS) stock valued at $2.3 million as a contribution of non-cash assets which was represented as an increase in private capital.

  - Licensee received NBS stock valued at $2.5 million for certain assets held by the Licensee which were reported by the Licensee to be of comparable value.

- In October 1992, Licensee applied for $6 million of leverage in the form of preferred stock based on the capital increase consummated in September 1992.

- On December 8, 1992, Licensee:

- Was reminded that, as a matter of policy, SBA does not leverage capital contributed in the form of non-cash assets until such assets are converted to cash.

- Was advised that an examination of the Licensee's operations would be needed before any leverage could be provided.

- Was advised that approval of disposition of assets to an associate would be conditioned on the Licensee converting the NBS stock into $2.5 million of cash within 120 days.

- Was advised that the $6 million leverage application was being returned.

o On December 9, 1992, SBA agreed to accept a $1.4 million leverage application based on the licensee's representation that:

- the medical receivables were free and clear of liens and encumbrances and

- the licensee would dispose of the NBS stock received in exchange for Licensee assets within 120 days.

o On March 11, 1993, the Examination report on the Licensee was issued. Among other things, the examiner was not able to determine the source of the donated assets. The examiner reported that there was a reluctance on the part of the Licensee's management to disclose any information concerning the source of the donated assets.

o On March 26, 1993, an examination letter was sent advising the Licensee of the results of the examination and stating that the leverage application would not be processed until the regulatory matters were resolved. The letter also provided the Licensee another opportunity to explain the source of the non-cash assets.

o On April 23, 1993, SBA received the Licensee's response to the Examination letter. Answers to questions concerning donated assets were not provided. Instead, the Licensee stated that they would reverse the transactions and that no explanation should be necessary.

o On May 5, 1993, the matter was referred to the Office of Inspector General for investigation with the expectation that the source of the contributed assets will be identified. Licensee was advised that they were not responsive to the examination letter and that the matter had been referred to the Inspector General.

- On May 7, 1993, ID was advised that CMS has not made interest payments on two debentures:

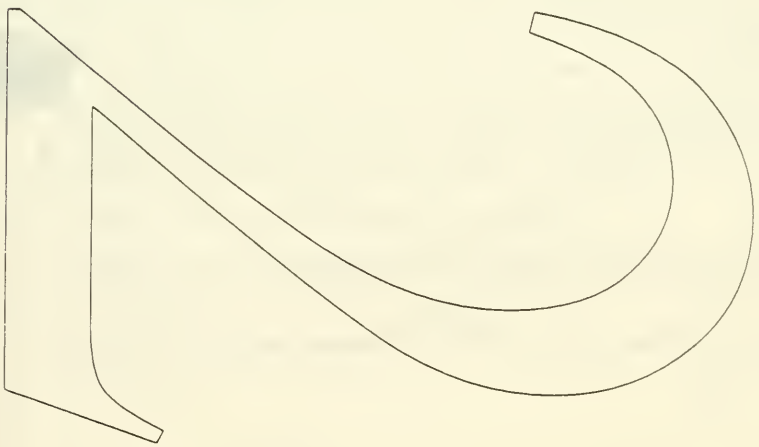
  - $14,867 was due on March 3 and
  - $35,952 was due on March 17.

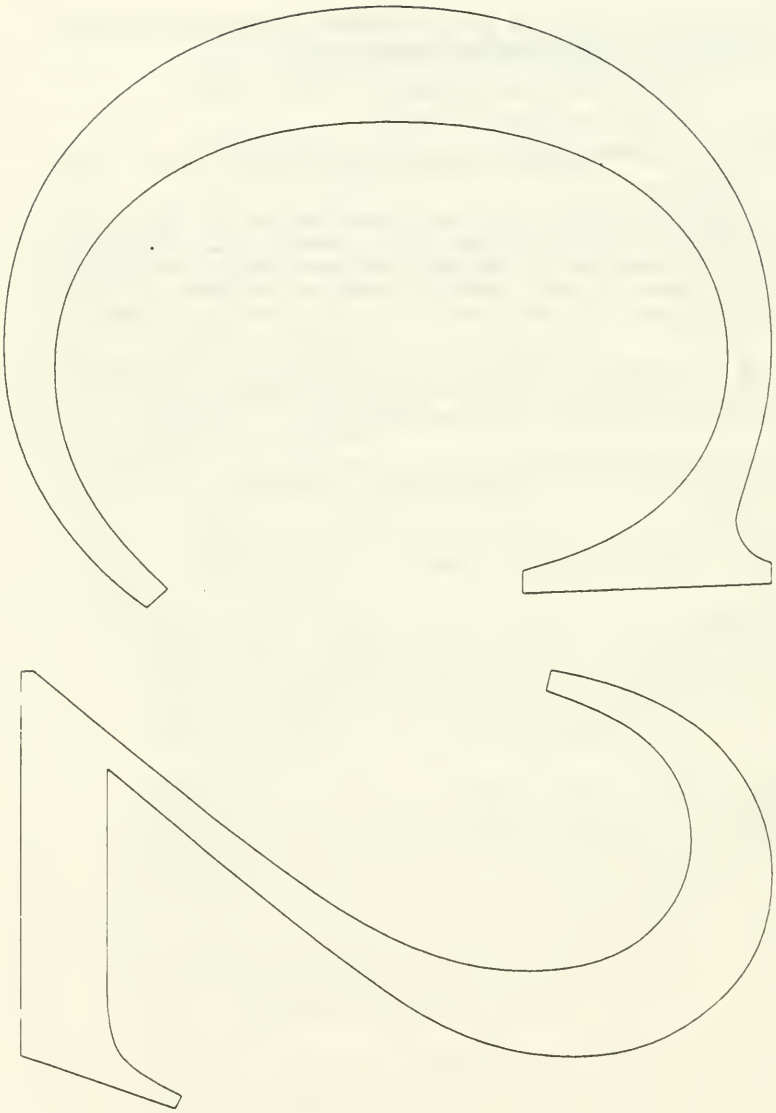
- By letter of May 10, 1993, CMS was given 7 days to make payment.

- On May 18, 1993, David Hale was called by the Account Executive concerning the non-payment. Mr. Hale stated that a check was in the mail for the $14,867 and that he would have to sell assets to come up with the $35, 952. He advised that the check would be in the mail on May 19, 1993.

- ID confirmed that there was enough in the account to cover the $14,867 check; however, there would not be enough to cover the second check.

- Our normal procedure is to transfer a licensee to liquidation when payments are not made in a timely manner.







PRIVILEGED AND CONFIDENTIAL

Date: June 14, 1993

To: Charles Mezger, Acting Director
Office of Examinations

Phyllis Dawson, Chief Area II
Office of Investment

From: Joseph L. Newell, Director
Office of Investment

Subject: Capital-Management Services, Inc.
Little Rock, Arkansas
License No. 06/06-5207

At about 4:00 P.M., I returned a call from:

Special Agent David Reign
Federal Bureau of Investigation
10825 Financial Centre Parkway
#2 Financial Center, Suite 200
Little Rock, Arkansas 72211.

His telephone number is (501) 221-9100. He advised that he had been referred to me by SBA's Office of the Inspector General.

He also advised that he was working with the U.S. Attorney's Office, and he requested the following information:

1. Copies of the SBA examiner's workpapers for the examination of the Licensee for the period ended November 30, 1992. He expressed an interest in "Findings" Numbers 1 and 2, but a greater interest in "Other Matters".

2. A copy of the prior examination report.

3. A copy of the Licensee's Preferred Stock Leverage Application filed October 8, 1992 and all related correspondence.

4. A copy of the Licensee's Annual Report, SBA Form 468, including the IPA Report, for the FYEs 6-30-91 and 6-30-92.

5. Copies of SBA Forms 1031 filed by the Licensee for the following SBCs:

   a. Autometrics
   b. Arkansas Commercial Realty
   c. Property Care, Inc.
   d. Cole Masonry & Construction, Inc.
   e. Midwest Consulting
   f. Med-A-Corp
   g. Incredible Closeout

6. Telephone numbers for Autometrics and Med-A-Corp which he said was known to the SBA examiner.

7. Copies of third-party correspondence (if any) seeking information from SBA about National Building Supply, Inc., and First Dominion Financial Group.

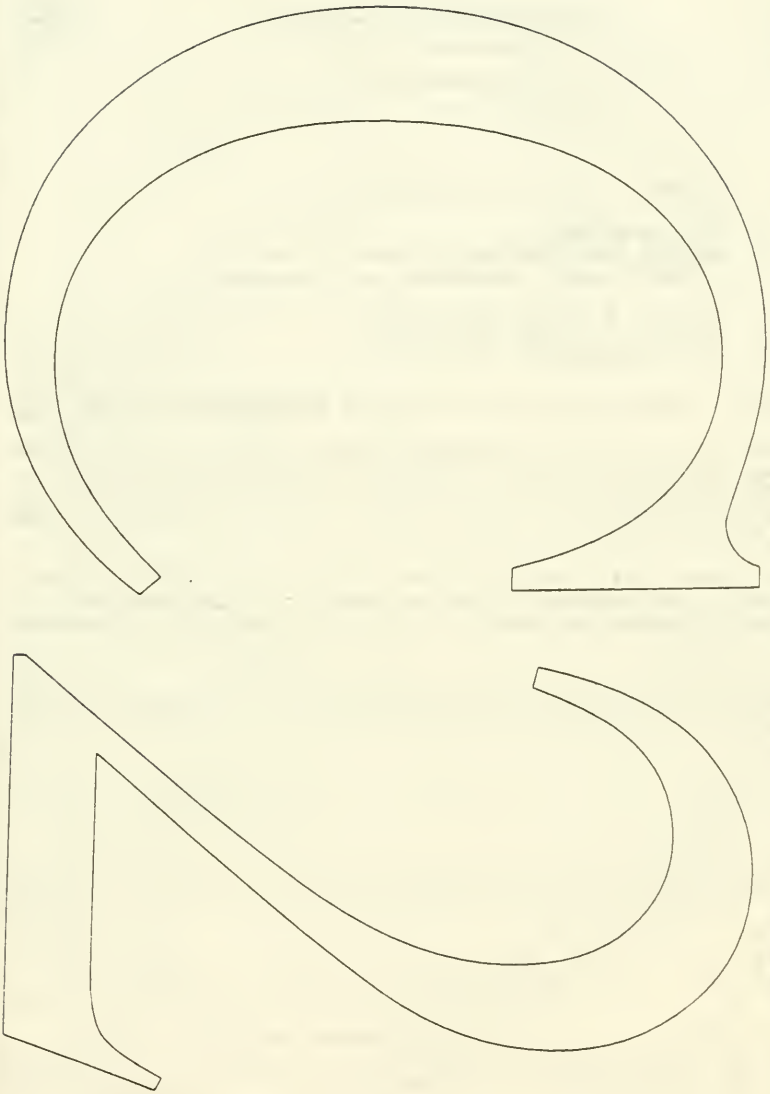
8. Copies of any prior referrals to the OIG re: Capital-Management Services, Inc. over the last five (5) years.

S/A Reign stated that the FBI inquiry, at this time, is limited to information available from other than "public" sources e.g. their files and SBA files but not SEC files.

Items numbers 1, 2 and 6 should be provided by the Office of Examinations directly to Special Agent David Reign. The balance of this request will be handled by the Office of Investment.

THIS INQUIRY SHOULD BE TREATED AS CONFIDENTIAL.

cc: Foren
Shapperson



M

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

DATE: August 4, 1993

TO: Janice E. Wolfe
Acting Associate Deputy Administrator
for Finance, Investment and Procurement

FROM: Charles E. Shepperson
Deputy Associate Administrator
for Investment

SUBJECT: Fraud Against the SBA--Capital Management Services, Inc.

On August 3, we received the attached letter from the United States Attorney, Eastern District of Arkansas concerning the investigation of Capital Management, Inc. We referred this case to the Inspector General for investigation. The Inspector General referred the case to the Federal Bureau of Investigation due to lack of resources.

The U.S. Attorney's letter describes instances where the licensee, David Hale, has submitted false and fraudulent statements etc. I have also attached Joe Newell's analysis of the U.S. Attorney's letter.

I mentioned this case to Marty Teckler today and we will get together with his staff later today to discuss the proper course of action.

United States Attorney
Eastern District of Arkansas

Post Office Box 1229
Little Rock, Arkansas 72203

July 29, 1993

Mr. Roger Peterson
Small Bus. Administration
409 3rd Street, S.W.
Investment Division, 6th Floor
Washington, D.C., 20416

Re: Capital-Management Services, Inc.
06-06-5207

Dear Mr. Peterson:

The transactions I told you about runs like this.

A stock broker in Little Rock, Arkansas, had control of an account of some people from Louisiana, which had over a million in cash in it. On November 4, 1988, he transferred from the account $800,000.00, to Capital-Management Services, Inc., $400,000.00, went into a savings account, and $400,000.00, in the form of cashiers checks "paid" off two delinquent loans Capital-Management Services, Inc., had on its' books and made a payment on a third. Effect - debit $800,000.00 cash, credit loans and accrued interest $400,000.00 and credit capital $400,000.00 On the basis of new capital, now documented by the Savings account and the issuance of new stock, David Hale applied for $900,000.00 in SBA leverage.

Over the course of the next week, David Hale created three new "loan/equity positions" in three "companies" and funded them in a total of $800,000.00. The "borrowers" then cut checks totaling $800,000.00 to return the money to the brokerage account. See attached chart.

I view this as $400,000.00 bogus private capital and three bogus "loan/equities". What is SBA's view?

I think something similar occurred in March, 1986, on a $1,500,000.00 leverage on the basis of $502,000.00 in new "capital". I need all the documents that can be located on the 1986 leverage.

Also, in early 1988, David Hale applied for leverage and was turned down. Please send what can be found about this.

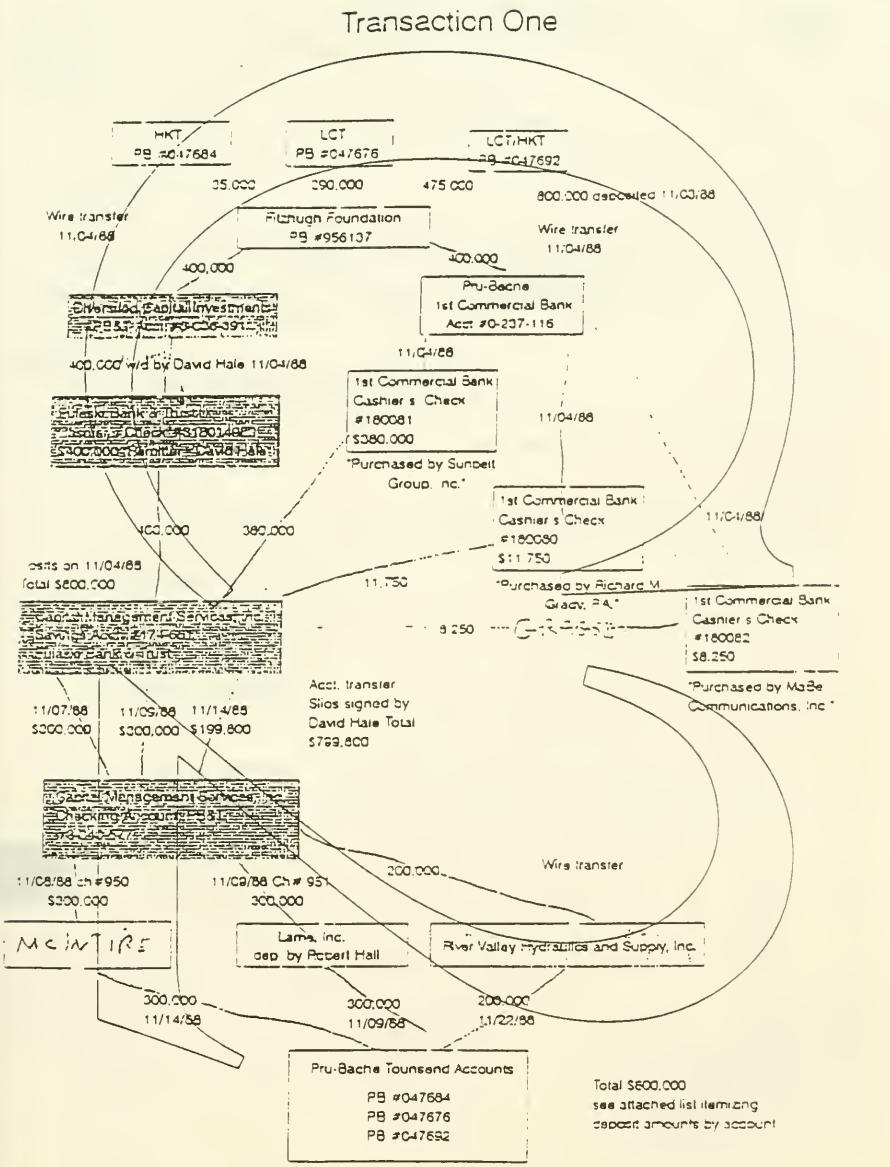
Also, I would like the material on the 1983 leverage.

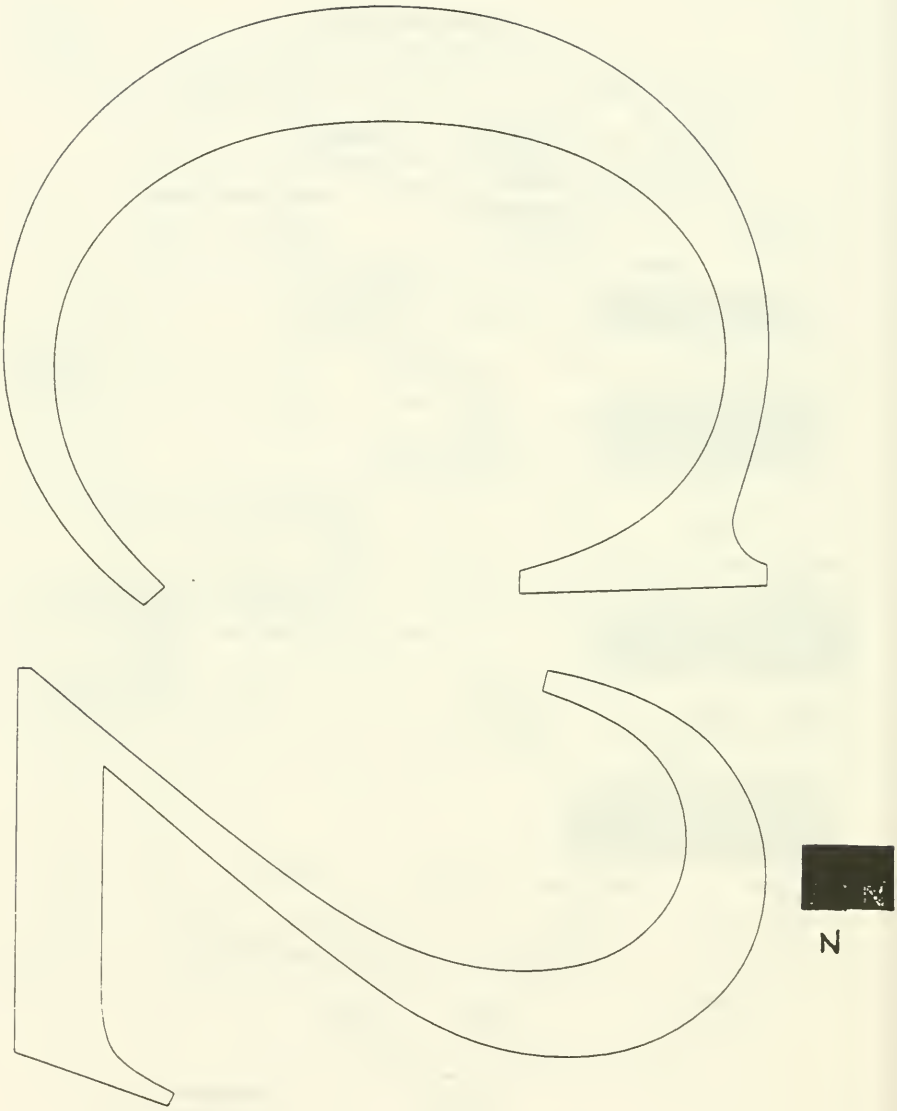
Yours truly,

RICHARD M. PENCE, JR.
United States Attorney

FLETCHER JACKSON
Assistant U.S. Attorney

FJ/skg
Encls.


Transaction One
HKT
PB #047684
LCT
PB #047676
LCT/HKT
PB #047692
35,000
390,000
475,000
800,000 deposited 11/03/88
Wire transfer
11/04/88
Pittsburgh Foundation
PB #956137
Wire transfer
11/04/88
400,000
400,000
Pru-Bache
1st Commercial Bank
Acct #0-237-116
11/04/88
400,000 wrd by David Hale 11/04/88
1st Commercial Bank
Cashier s Check
#180081
$380,000
*Purchased by Sunbelt
Group, Inc.*
11/04/88
1st Commercial Bank
Cashier s Check
#180080
$11,750
*Purchased by Richard M
Gracy, P.A.*
11/04/88/
400,000
380,000
11,750
9,250
1st Commercial Bank
Cashier s Check
#180082
$8,250
*Purchased by MaBe
Communications, Inc.*
Acct. transfer
Slips signed by
David Hale Total
$799,800
11/07/88
$300,000
11/09/88
$300,000
11/14/88
$199,800
11/08/88 ch#950
$300,000
11/09/88 Ch# 951
300,000
200,000
Wire transfer
Lama, Inc.
dep by Robert Hall
River Valley Hydraulics and Supply, Inc.
300,000
11/14/88
300,000
11/09/88
200,000
11/22/88
Pru-Bache Tounsend Accounts
PB #047684
PB #047676
PB #047692
Total $800,000
see attached list itemizing
deposit amounts by account


N

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

DATE:

TO: See Distribution Below

FROM: Associate Administrator
for Investment

SUBJECT: Liquidation Conference
Capital Management Services, Inc.
License No. 06/06-5207

Attached is a conference memorandum on the subject SBIC.

In accordance with the applicable procedures, a meeting will be held in my office at 2:00 P.M. on August 16, 1993 to decide on action to be taken by SBA as a regulator and creditor.

We would appreciate it if you or your designee would be in attendance.

Distribution:

Ronald Cibolski - Office of Liquidation

Marty Teckler - Office of General Counsel

Mark Stephens - Office of General Counsel

Wayne S. Foren - Investment Division

Ned Shepperson - Investment Division

Wayne S. Foren

Attachment

PRIVILEGED AND CONFIDENTIAL

PROFILE

August 4, 1993

1. Licensee:

Capital Management Services, Inc.
1910 North Grant, Suite 200
Little Rock, Arkansas 72207
License No. 06/06-5207
Telephone No. (501) 664-8613

2. Organization and Management:

(a) Licensed: March 14, 1979

(b) Officers, Directors and Owners:

NAME	TITLE	% of Ownership
David L. Hale 2823 N. Pierce Little Rock, AR	President/ Director	82%
Linda Sue Hale 2823 N. Pierce Little Rock, AR		9%
Hazel Dennis 10455 Julie Beth Cypress, CA		9%
James Hall 5712 Cadron Creek North Little Rock, AR	Secretary/ Director	
George S. Ivory 8815 Beck Little Rock, AR 72204	Vice President	

3. Financial Condition (unaudited as of Sept. 30, 1992)

ASSETS		
Loans & Invest (cost)	$2,214,402	
Unrealized Deprec.	0	
Unrealized Apprec.	0	
Loans & Invest (value)	2,214,402	
Cash & Idle Funds	51,819	
Other Assets	16,487,740	
Total Assets		$18,753,961

LIABILITIES		
SBA Guaranteed Debt	$2,000,000	
Other Liabilities	70,293	
Total Liabilities	$2,070,293	
CAPITAL		
Private Capital	$15,166,092	
SBA Preferred Stock	$ 1,400,000	
Unrealized Gain (Loss)	(28,759)	
Non-Cash Gain/Income	0	
Undis. Real. Earn. (Loss)	146,335	
Total	$16,683,668	
Total Liabilities and Capital		$18,753,961

4. Outstanding SBA Debt:

Principal Balance	Loan Number	Dist. Date	Mat. Date	Int. Rate
$ 500,000	01344600-04	12/09/83	11/30/93	11.50%
$1,000,000	01436600-07	09/10/86	09/08/96	7.25%
$ 500,000	01455000-09	03/22/89	03/17/99	9.00%
Preferred Stock:				
$1,500,000	05010500-02	09/30/89		3.000%

5. Violations:

Violation of Section 107.906 (b) False Statement.
The Licensee is in violation of Section 107.906 (b). There are eleven instances of false statements cited in items 1 through 7 of the attached memorandum (RE: FRAUD AGAINST SBA).

6. Chronology of SBA's request for corrective action:
Since the licensee cannot rescind a false statement there is no request for corrective action.

7. Financial Condition:

In our opinion, the reported financial position of licensee as of 9/30/92 does not give a true picture of the underlying condition of the licensee. If the licensee's statement of financial position is adjusted to remove the donated capital and the shares of National Building Supply (NBS), which is insolvent, are written down to zero, the licensee's capital impairment is 171%, as shown on the adjusted Statement of Financial position. In addition, there are good reasons to believe that the Licensee's Portfolio Securities are materially overvalued.

Statement of Financial Position

	9/30/92	Adjustment	Adjusted 9/30/92
Portfolio Securities Cost	$2,214,402		$2,214,402
Less Current Maturities	570,617		570,617
	1,643,785		1,643,785
Current Assets			
Cash	51,819		51,819
Interest and divds. rec.	197,149		197,149
Current portfolio mat.	570,617		570,617
Other current assets (NBS)	2,513,999	(2,513,999)	0
Other Assets			
Furniture and equip.	2,799		2,799
Other (donated assets)	13,773,793	(13,759,782)	14,011
Total Assets	18,753,961	(16,273,781)	2,480,180
Long Term Debt SBA	2,000,000		2,000,000
Current & other Liab.	70,293		70,293
Capital			
Paid in Capital & Surplus	15,166,092	(13,759,782)	1,406,310
3% Preferred Stock	1,400,000		1,400,000
Unrealized gain (loss)	(28,759)		(28,759)
Undist. Realized Earnings	146,335	(2,513,999)	(2,367,664)
Total Capital	16,683,668	(16,273,781)	409,887
Total Liab. and Capital	18,753,961	(16,273,781)	2,480,180
Capital Impairment	0.2%		171.1%

8. SBA Audit:

An Examination Report dated March 11, 1993 for the 24 - month period ended November 30, 1992 contained the following findings:

Finding 1 - Assets transferred to an Associate
Overline investment
Assets not properly safeguarded

Finding 2 - Sale of assets misclassified
Misrepresentation to SBA

The Office of SBIC Examinations made the following statement in its transmittal letter:

"We believe the donation and exchange of assets raises serious questions, such as potential conflict of interest transactions, which we could not pursue because of Mr. Anderson's refusal to answer our questions regarding CACDC's source of the stock and accounts receivable. Without additional information, we believe the potential for undisclosed material facts exists in the transactions, including the potential for illegal activity."

In a March 26, 1993 examination letter to the licensee, the Office of Investment sought answers to questions concerning the source of the stock and accounts receivable. Since OI did not receive answers to these questions, it referred the matter to the IG on May 5, 1993 for an investigative evaluation. IG referred the matter to the FBI.

9. Recommendation:

It is recommended that the Licensee be transferred to the Office of Liquidation to commence appropriate legal and/or administrative action to protect the interest of SBA.

Walter Peterson
Financial Analyst, Area II
Office of Investment

Phyllis E. Dawson
Chief, Area II
Office of Investment

INVESTMENT DIVISION
SUITE 6600
U. S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416

M E M O R A N D U M

TO: SBIC Files INV 6-7-1

FROM: Joseph L. Newell, Director
Office of Investment

RE: FRAUD AGAINST SBA
Capital-Management Services, Inc.
License No. 06/06-5207

DATE: August 3, 1993

Based upon information provided by the U.S. Department of Justice, United States Attorney, Eastern District of Arkansas, in a letter dated July 29, 1993 (copy attached), it is apparent that Capital Management Services, Inc.(the Licensee), has defrauded SBA of $900,000 of leverage funds.

A review of the SBA files of the Licensee, in light of the information provided by the DOJ, disclosed the following:

1. False and fraudulent "Amendment to License Application" dated 11/04/88, signed by David L. Hale, filed under cover of letter dated 11/07/88 (signed by David L. Hale), falsely certifying to a bogus $400,000 increase in the Licensee's private capital.

2. False and fraudulent letter dated 11/18/88, signed by David L. Hale, falsely reporting the source of the $400,000 to be the proceeds (total $864,000) from his wife's sale of a small commercial center.

3. False and fraudulent letter dated 11/12/88, signed by David L. Hale, falsely reporting the repayment in full of the Sunbelt Group, Inc. loan ($380,000).

4. False and fraudulent "Application for Funds" ($400,000 P/S and $500,000 debentures) dated 11/04/88, signed by David L. Hale and filed under cover of letter dated 11/16/88, signed by David L. Hale.

5. False and fraudulent letter dated February 6, 1989, signed by David L. Hale, reporting receipt of an $8,250.00 payment in November 1988 on the Mabe Communication, Inc., loan and payment in full of the Sunbelt Group, Inc. loan.

6. False and fraudulent filing of Portfolio Financing Reports, SBA Form 1031 as follows:

   A. Plant and working capital loan to Lame, Inc., in the amount of $300,000, signed by David L. Hale and dated 11/09/88.

   B. Equity in coins, expand operations and working capital loan in the amount of $300,000 to McIntire Numismatic Auctions, Inc. (McIntire) signed by David L. Hale and dated 11/07/88.

   C. Inventory, equipment and operating capital loan to River Valley Hydraulics and Supply, Inc. (River Valley) loan in the amount of $200,000 signed by David L. Hale and dated 11/11/88.

7. Ongoing and continuous false and fraudulent filings with SBA as follows:

   A. Annual Report, SBA Form 468, for the FYE 06/30/89 reports loans to Lame, Inc., McIntire and River Valley.

   B. Annual Report, SBA Form 468, for the FYE 06/30/90 reports loans to Lame, Inc., McIntire and River Valley.

   C. Annual Report, SBA Form 468, for the FYE 06/30/91 reports all loans reduced to -0- balances.

8. To maintain a cover-up of the bogus financings to Lame, Inc., McIntire, and River Valley, these securities have been exchanged for other securities issued by "questionable" entities at "questionable" values as discussed below:

   A. On 04/15/91, the outstanding financings of Retail Liquidators, Inc. ($389,776), River Valley ($248,413), Lame, Inc. ($300,000) and Arkansas Commercial Realty ($58,425) were exchanged for equity shares of:

Converging Systems, Inc.	$ 400,000
Cyberspace Corp.	350,000
Patient Communications, Inc.	250,000
	$1,000,000

   B. On 02/12/91, the outstanding financings of McIntire ($300,000), and Southern Foods ($113,650) were exchanged for an equity investment in Med-A-Corp, Inc..

   C. On 06/01/92, the equity positions in Converging Systems, Inc. ($400,000); Cyberspace Corp. ($350,000); Patient Communications, Inc. ($250,000) along with 4 other financings were exchanged for stock of National Building Supply, Inc. with a reported value of $2,514,000 as reported on the most recent financial statements filed with SBA.

   SBA has questioned the value of the National Building

Supply, Inc. stock as well as the circumstances under which it came into possession of the Licensee.

D. On 03/15/93, the equity investment in Med-A-Corp ($420,000) was exchanged for an equity investment in FSA Financial Services, Inc. (FSA) ($420,000).

SBA has questioned the existence of FSA and the values assigned to the exchange transaction.(See SBA letter August 2, 1993).

INVESTMENT DIVISION
SUITE 6600
U. S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416

M E M O R A N D U M

TO: SBIC Files INV 6-7-1

FROM: Joseph L. Newell, Director
Office of Investment

RE: FRAUD AGAINST SBA
Capital-Management Services, Inc.
License No. 06/06-5207

DATE: August 3, 1993

Based upon information provided by the U.S. Department of Justice, United States Attorney, Eastern District of Arkansas, in a letter dated July 29, 1993 (copy attached), it is apparent that Capital Management Services, Inc.(the Licensee), has defrauded SBA of $900,000 of leverage funds.

A review of the SBA files of the Licensee, in light of the information provided by the DOJ, disclosed the following:

1. False and fraudulent "Amendment to License Application" dated 11/04/88, signed by David L. Hale, filed under cover of letter dated 11/07/88 (signed by David L. Hale), falsely certifying to a bogus $400,000 increase in the Licensee's private capital.

2. False and fraudulent letter dated 11/18/88, signed by David L. Hale, falsely reporting the source of the $400,000 to be the proceeds (total $864,000) from his wife's sale of a small commercial center.

3. False and fraudulent letter dated 11/12/88, signed by David L. Hale, falsely reporting the repayment in full of the Sunbelt Group, Inc. loan ($380,000).

4. False and fraudulent "Application for Funds" ($400,000 P/S and $500,000 debentures) dated 11/04/88, signed by David L. Hale and filed under cover of letter dated 11/16/88, signed by David L. Hale.

5. False and fraudulent letter dated February 6, 1989, signed by David L. Hale, reporting receipt of an $8,250.00 payment in November 1988 on the Mabe Communication, Inc., loan and payment in full of the Sunbelt Group, Inc. loan.

SBA Form 1031 as follows:

A. Plant and working capital loan to Lame, Inc., in the amount of $300,000, signed by David L. Hale and dated 11/09/88.

B. Equity in coins, expand operations and working capital loan in the amount of $300,000 to McIntire Numismatic Auctions, Inc. (McIntire) signed by David L. Hale and dated 11/07/88.

C. Inventory, equipment and operating capital loan to River Valley Hydraulics and Supply, Inc. (River Valley) loan in the amount of $200,000 signed by David L. Hale and dated 11/11/88.

7. Ongoing and continuous false and fraudulent filings with SBA as follows:

A. Annual Report, SBA Form 468, for the FYE 06/30/89 reports loans to Lame, Inc., McIntire and River Valley.

B. Annual Report, SBA Form 468, for the FYE 06/30/90 reports loans to Lame, Inc., McIntire and River Valley.

C. Annual Report, SBA Form 468, for the FYE 06/30/91 reports all loans reduced to -0- balances.

8 To maintain a cover-up of the bogus financings to Lame, Inc., McIntire, and River Valley, these securities have been exchanged for other securities issued by "questionable" entities at "questionable" values as discussed below:

A. On 04/15/91, the outstanding financings of Retail Liquidators, Inc. ($389,776), River Valley ($248,413), Lame, Inc. ($300,000) and Arkansas Commercial Realty ($58,425) were exchanged for equity shares of:

Converging Systems, Inc.	$ 400,000
Cyberspace Corp.	350,000
Patient Communications, Inc.	250,000
	$1,000,000

B. On 02/12/91, the outstanding financings of McIntire ($300,000), and Southern Foods ($113,650) were exchanged for an equity investment in Med-A-Corp. Inc.

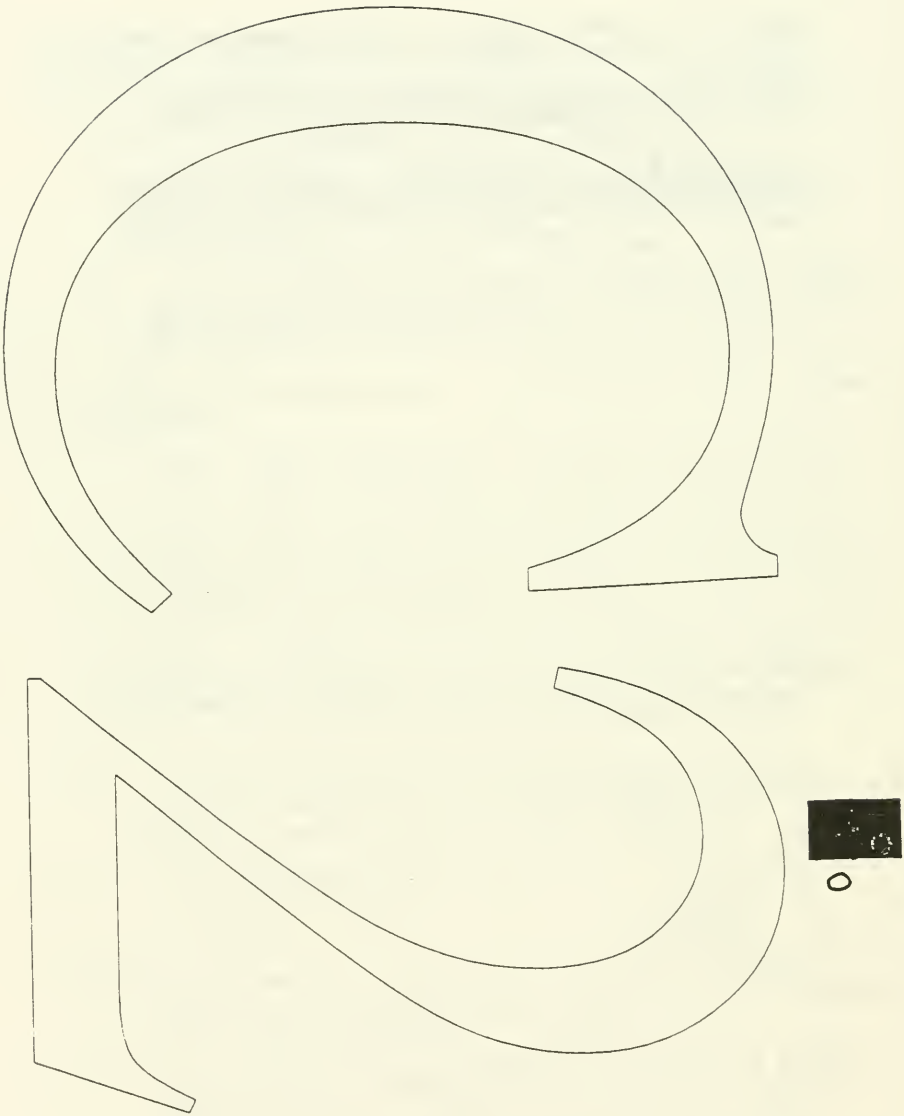
C. On 06/01/92, the equity positions in Converging Systems, Inc. ($400,000); Cyberspace Corp. ($350,000); Patient Communications, Inc. ($250,000) along with 4 other financings were exchanged for stock of National Building Supply, Inc. with a reported value of $2,514,000 as reported on the most recent financial statements filed with SBA.

SBA has questioned the value of the National Building

Supply, Inc. stock as well as the circumstances under which it came into possession of the Licensee.

D. On 03/15/93, the equity investment in Med-A-Corp ($420,000) was exchanged for an equity investment in FSA Financial Services, Inc. (FSA) ($420,000).

SBA has questioned the existence of FSA and the values assigned to the exchange transaction. (See SBA letter August 2, 1993).



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

MEMORANDUM

PRIVILEGED AND CONFIDENTIAL

DATE: August 9, 1993

TO: Erskine B. Bowles
Administrator

FROM: Wayne S. Foren
Associate Administrator for Investment

SUBJ: Capital-Management Services, Inc.
Little Rock, Arkansas
License No. 06/06-5207

This is to inform you that there have been significant new developments concerning the above-referenced Specialized Small Business Investment Company (SSBIC) that may lead to a criminal indictment of the manager of the SSBIC, Mr. David Hale.

On August 3, 1993, the Office of Investment received a letter from the United States Attorney, Eastern District of Arkansas, concerning the Licensee's 1988 application for $900,000 in SBA leverage. In connection with the application, the Licensee is alleged to have engaged in a series of bogus transactions that caused SBA to believe that the Licensee had increased its private capital by $400,000 and that problem investments had been repaid. On the basis of the Licensee's false statements, SBA approved funding in the amount of $900,000.

We understand that the U.S. Attorney met with Mr. Hale and his attorney on August 6, 1993 and presented him with a draft indictment alleging that Mr. Hale and two other individuals defrauded the United States (SBA) in 1988. SBA was sent a copy of the draft indictment. SBA personnel from the Investment Division and the Office of General Counsel will meet with the FBI and the U.S. Attorney in Little Rock on August 10, 1993 to discuss the evidence against Mr. Hale and the SSBIC with a view towards placing the SSBIC into receivership.

We have also been informed by the Assistant U.S. Attorney that the licensee made false statements in a 1992 application for SBA leverage in the amount of $6.0 million. The 1992 request for funds was not approved. Finally, the FBI and the U.S. Attorney are investigating the Licensee's 1986 and 1983 leverage applications to determine if fraud was involved.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
VS.	)	
	)	LR-CR-93-
DAVID L. HALE;	)	
CHARLES MATTHEWS; AND	)	18 U.S.C. §371
EUGENE FITZHUGH;	)	18 U.S.C. §3013
	)	18 U.S.C. §3571

INDICTMENT

THE GRAND JURY CHARGES:

COUNT I

That from on or about the 3rd day of November, 1988, and continuing through on or about the 22nd day of November, 1988, in the Eastern District of Arkansas, defendants DAVID L. HALE, CHARLES MATTHEWS, AND EUGENE FITZHUGH, did conspire and agree together to commit offenses against the United States, that is in violation of 18 U.S.C. 1006, by agreeing to cause false entries in the books, reports, and statements of Capital-Management Services, Inc., a Small Business Investment Company, licensed by the Small Business Administration, in violation of 18 U.S.C. 645, by agreeing to cause false statements to be made to the Small Business Administration to influence its actions and to obtain money thereby, in violation of 18 U.S.C. 1001, by agreeing to conceal and cover up material facts in a matter within the jurisdiction of the Small Business Administration, an agency of the United States, and further agreed to defraud the United States.

It was a part of the conspiracy that defendant CHARLES MATTHEWS, then an employee of an investment firm would transfer

from an account held by said firm for a Louisiana Family, $800,000.00 into another account at the firm in the name of Fitzhugh Foundation (defendant Eugene C. Fitzhugh), and the money would then be transferred in the sum of $400,000.00 to Diversified Capital Investments (defendant David L. Hale), and would then be transferred to a savings account of Capital-Management Services, Inc., a Small Business Investment Company, principally owned by defendant DAVID L. HALE, and which company also would receive the other $400,000.00 by way of cashier's checks purportedly in payment on certain problem loans made by the company to other entities in the past. DAVID L. HALE would then represent to Small Business Administration that he had invested $400,000.00 into the company by virtue of a stock purchase with money his wife had obtained from the sale of real estate, as evidenced by $400,000.00 now in the Capital-Management savings account, and the company would apply under the Small Business Investment Company Act, for $900,000.00 from the Small Business Administration for the purpose of making loans to small businesses, the application showing, among other things, commitments to make a loan to "Corporations" in the sum of $600,000.00 located at Mr. Matthews' home and office addresses.

It was also a part of the conspiracy that with the assistance of defendant, EUGENE C. FITZHUGH, defendant, DAVID L. HALE would then create and fund three transactions purportedly to Lame, Inc., River Valley Hydraulic and Supply, Inc., and McIntire Numismatic Auction, Inc., totaling $800,000.00, with their entities, to in turn remit the money back to the account from which defendant

CHARLES MATTHEWS had originally transferred the $800,000.00.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants in the Eastern District of Arkansas performed the following Overt Acts:

1.

2.

All in violation of 18 U.S.C. §371.

COUNT II

That on or about the 4th day of November, 1988, in the Eastern District of Arkansas, defendant, David L. Hale, willfully did make a statement knowing it to be false, for the purpose of influencing the actions of the Small Business Administration, in he represented his wife as the source of new capital he invested in Capital-Management Systems, Inc., his wife purportedly received the money from an August 14, 1988, sale of a small commercial center, wherein he knew that the source of funds was an account at a brokerage firm and the new "capital" was shown, all in violation of 18 U.S.C. §645.

COUNT III

That from on or about the 1st day of March, 1989, and continuing through on or about the 3rd day of March, 1989, in the Eastern District of Arkansas, defendants DAVID L. HALE, and CHARLES MATTHEWS, did conspire and agree together to commit offenses against the United States, that is in violation of 18 U.S.C. 1006, by agreeing to cause false entries in the books, reports, and

statements of Capital-Management Services, Inc., a Small Business Investment Company, licensed by the Small Business Administration, in violation of 18 U.S.C. 645, by agreeing to cause false statements to be made to the Small Business Administration to influence its actions and to obtain money thereby, in violation of 18 U.S.C. 1001, by agreeing to conceal and cover up material facts in a matter within the jurisdiction of the Small Business Administration, an agency of the United states, and further agreed to defraud the United States.

It was a part of the conspiracy that defendant CHARLES MATTHEWS, then an employee of an investment firm would transfer from an account held by said firm for a Louisiana Family, $275,000.00 into a bank account of Retail Factors, Inc., and this would be transferred to Capital-Management Services, Inc., a Small Business Investment Company, principally owned by defendant DAVID L. HALE, by way of cashier's checks purportedly in payment on certain loans made by the company to other entities in the past. DAVID L. HALE would then represent to Small Business Administration that in connection with the company's application under the Small Business Investment Company Act, for $900,000.00 funding, that certain loans questioned by the Small Business Administration had been paid off or were current.

It was also a part of the conspiracy that defendant, DAVID L. HALE, would then create and fund a transaction with Liberty Mortgage Company in the sum of $275,000.00 with it to in turn transfer the money back to the account which defendant CHARLES

MATTHEWS had originally transferred the $275,000.00.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants in the Eastern District of Arkansas performed the following Overt Acts:

1.

2.

All in violation of 18 U.S.C. §371.

COUNT IV

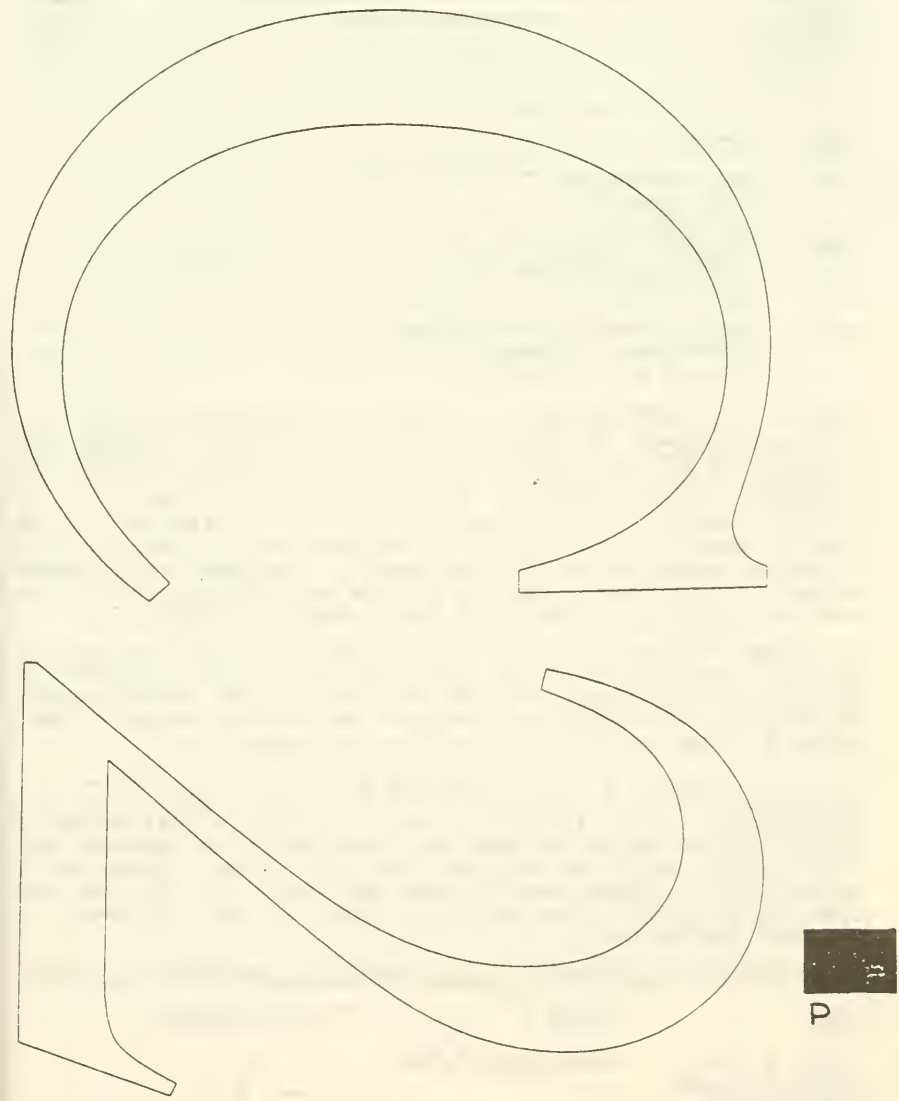
That on or about the 29th day of May, 1988, in the Eastern District of Arkansas, defendant, DAVID ~~D.~~ HALE, willfully did make a statement knowing it to be false for the purpose of influencing the actions of the Small Business Administration in a Form 1031, that is that the financing as to Liberty Mortgage, Inc., was for working capital. All in violation of 15 U.S.C. §645.

A TRUE BILL.

FOREMAN

Prepared by:

FLETCHER JACKSON
Assistant U.S. Attorney
P.O. Box 1229
Little Rock, AR 72203



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

DATE: September 21, 1993

TO: Erskine Bowles,
Administrator

FROM: Wayne S. Foren,
Associate Administrator
for Investment

RE: Capital Management Services, Inc.
Little Rock, Arkansas
License No. 06/06-5207

SBA was appointed receiver of Capital Management Services, Inc. (CMS) on September 15, 1993, by Court Order in Civil Action No. LR-C-93-646 in the U.S. District Court for the Eastern District of Arkansas, Western Division. SBA was appointed Receiver for the purpose of liquidating all of CMS' assets and satisfying the claims of CMS' creditors in the order of priority as determined by the Court. Judge David L. Hale, the president and a director of the licensee, consented to the receivership. Judgment was rendered against CMS in favor of the SBA for the sum of $3,816,154.21 plus accrued interest, dividends and post judgment interest.

On Monday, September 20, 1993, Mark K. Stephens, Associate General Counsel, and Cecilia Seay, the Receiver's agent retained to liquidate CMS, closed the bank accounts of CMS (approximately $3,200 remained in the bank accounts), seized the records of CMS, and are in the process of martialling the assets.

The U.S. Attorney's office informed Mr. Stephens that they are scheduled to make a presentation to the Grand Jury on Tuesday, September 21, 1993, at 3:00 p.m. and are expecting indictments to be returned on Tuesday or Wednesday, September 21 or September 22, 1993 against Judge Hale and two other individuals. Judge Hale's attorney, Mr. Coleman, has indicated that Judge Hale may step down from his position as a municipal judge if the indictment is returned against him.

Ownership and Management of the Licensee (as represented to SBA):

NAME	TITLE	% OF OWNERSHIP
David L. Hale	President/Director	82
Linda S. Hale*		9
Hazel Dennis		9
James Hall	Secretary/Director	
George Ivory	Vice President	

* David Hale's wife.

SBA provided financing to CMS through the purchase/guarantee of three subordinated debentures totalling $2,000,000 ($500,000 dated November 30, 1983, $1,000,000 dated September 8, 1986, and $500,000 dated March 17, 1989) and the purchase of $1,400,000 in preferred stock ($500,000 in 1980, $500,000 in 1986, and $400,000 in 1989).

Failure to inform SBA of Capital Impairment is the violation stated in the Complaint. CMS is approximately 171% capitally impaired.

Per the last Financial Statement (SBA Form 468) submitted to the SBA dated September 30, 1992, CMS maintained a cash balance of $51,819, and owned 15 notes and 7 equities with a total principal balance outstanding and valuation for the same sum of $2,214,402. At September 20, 1993, approximately $3,200 cash remained in the CMS bank accounts. The Office of Liquidation believes that many of the listed portfolio assets are questionable or do not exist.

cc: John T. Spotila
Martin D. Teckler

Stephens Exp 14
FOR ID
GR 10-30-95

Spotila Ex 1
FOR ID
GR 11-6-95

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

FICE OF THE ADMINISTRATOR

NOTICE

The information contained herein has been determined to be confidential in nature and therefore not releasable to unauthorized parties. Disclosure of this information may violate Federal law (e.g., Privacy Act of 1974, the Right to Financial Privacy Act of 1978, and 18 U.S.C. § 1905). Utmost discretion should be exercised.

DEPOSITION EXHIBIT
Teckler 2
11-17-95 PL

November 15, 1993

Honorable John J. LaFalce
Chairman, Committee on Small Business
Congress of the United States
House of Representatives
Washington, DC 20515-6315

Re: Capital Management Services, Inc.

Dear Chairman LaFalce:

I am pleased to provide the information you requested on November 4, 1993, regarding Capital Management Services, Inc. ("Capital Management"), a Specialized Small Business Investment Company ("SSBIC") located in Little Rock, Arkansas.

As general background, Capital Management was licensed by the Small Business Administration ("SBA") in 1979, and received total financial assistance of $3.4 million from SBA during the period from September, 1983 through March, 1989. While monitoring Capital Management in the fall of 1992 in connection with a request for additional leverage, SBA began to suspect regulatory violations by the SSBIC. SBA required Capital Management to provide further information about its portfolio of investments, and then in October, 1992 and December, 1992, SBA denied Capital Management's requests for the additional financing.

In the review process, SBA became aware of serious potential regulatory problems relating to Capital Management. Accordingly, SBA commenced an audit of the SSBIC for the 24 month period ending ber 30, 1992. As a result of the audit report, issued in

March of 1993, SBA referred the case to the Office of Inspector General ("IG") for investigation. The IG, in turn, made a referral to the Federal Bureau of Investigation ("FBI") for further inquiry. SBA officials traveled to Arkansas and met with the FBI and the local Assistant United States Attorney in order to review the records of Capital Management. This joint effort uncovered additional regulatory violations by Capital Management. SBA then moved for and obtained appointment as receiver ("Receiver") for Capital Management pursuant to an Order entered by the United States District Court for the Eastern District of Arkansas, Western Division, on September 15, 1993. (United States of America v. Capital Management Services, Inc., Civil Action No. LR-C-93-646 (Eisele, J.))

The Receivership was instituted for the purpose of administering and controlling Capital Management, making inquiry into regulatory compliance, liquidating all of Capital Management's assets, satisfying the claims of creditors therefrom, and pursuing all causes of action available to Capital Management against third parties. SBA is authorized to act as a receiver of an SSBIC under Section 311 of the Small Business Investment Act of 1958, as amended ("Act"), 15 U.S.C. § 687c.

The following is a point by point response to the specific inquiries in your letter:

SSBIC License

Capital Management was issued an SSBIC license by SBA on March 14, 1979 under Section 301(d) of the Act, 15 U.S.C. § 681(d). SSBICs licensed under Section 301(d) of the Act are permitted to fund only those concerns owned by socially or economically disadvantaged persons.

Ownership

According to SBA's files, Capital Management is currently owned by David L. Hale 82%, Linda Sue Hale (David Hale's wife) 9% and Hazel Dennis (David Hale's sister) 9%.

Private Capital

As required by Section 302 of the Act, 15 U.S.C. § 682, Capital Management was initially capitalized with $152,500 in "Private Capital", as defined in SBA's regulations ("Regulations") at 13 C.F.R. § 107.3. Please note that the minimum requirement for "Private Capital" has been amended since the time Capital

Management was licensed. Subsequently, Capital Management's private paid-in capital increased to $500,500 in March of 1980, to $1,006,310 in June of 1986 and to $1,406,310 in December of 1988.

SBA Leverage

The total amount of SBA financial assistance provided to Capital Management to date is $3.4 million. In accordance with Section 303(b) of the Act, 15 U.S.C. § 683(b), SBA provided financing to Capital Management through the purchase or guarantee of three subordinated debentures issued by Capital Management in the total principal amount of $2,000,000. The three financings were made in November, 1983; September, 1986; and March, 1989. The SBA also provided financing to Capital Management through the purchase of a total face amount of $1,400,000 in preferred stock issued by the Company in three separate financings in March, 1980; May, 1986; and March, 1989. The SBA is authorized to purchase preferred securities of SSBICs pursuant to Section 303(c) of the Act, 15 U.S.C. § 683(c).

Portfolio Financings

You have requested details regarding Capital Management's financings to individual small business concerns. These SBIC financings were not SBA approved investments, since SBA does not select or approve small businesses which SBICs choose to finance. Individual financing decisions are made by the SBICs, without prior consultation with SBA. We are not in a position at this time to give you details about individual financings by Capital Management.

As Receiver, SBA is marshalling all of Capital Management's assets and property and gathering and reviewing all of its documents, books, records and files. Since its appointment as Receiver, SBA has been operating pursuant to a liquidation directive. New financings are not being made by Capital Management. The Receiver has retained a Principal Agent, Cecilia R. Seay, who is experienced in SBIC liquidation, has served as an agent for other receiverships, has interviewed and deposed numerous individuals, and has general awareness of SBIC regulations and corporate duties in the State of Arkansas. We are in the process of retaining accountants to follow the flow of funds from Capital Management. All of Capital Management's individual financings are being reviewed, with more information being obtained daily. Once the information is available, we will review it to assess what details we can make available to you.

As additional background, I am attaching further information relating to Capital Management. If you like, SBA representatives

can meet at a mutually convenient time with Tom Powers, Jeanne Roslanowick, or any other of your designated representatives to clarify this information.

I look forward to working closely with you and the Small Business Committee as we proceed.

Sincerely,

Erskine B. Bowles
Administrator

Attachments

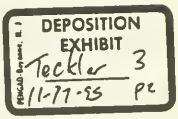
EBB/s

Spotila Ex 6
For ID
JA 11-6-95



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR



MEMORANDUM

TO: Martin Teckler

FROM: Erskine Bowles

DATE: March 3, 1994

SUBJECT: Capital Management Co.

I am recusing myself from all involvement in the SBA's ongoing investigation into Capital Management.

My instructions to you and others since this investigation began still stand. These instructions are:

1. Undertake the Capital Management investigation in the same vigorous manner you would any other investigation of an SSBIC. If you find any evidence of fraud or abuse, you should take every appropriate step to prosecute the person or persons who have perpetrated this malfeasance; and

2. The SBA should provide Chairman LaFalce with any relevant information that he requests. This information should be provided as soon as possible after the request is received.

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

MEMORANDUM

TO: Martin Teckler

FROM: Erskine Bowles

DATE: March 3, 1994

SUBJECT: Capital Management Co.

I am recusing myself from all involvement in the SBA's ongoing investigation into Capital Management.

My instructions to you and others since this investigation began still stand. These instructions are:

1. Undertake the Capital Management investigation in the same vigorous manner you would any other investigation of an SSBIC. If you find any evidence of fraud or abuse, you should take every appropriate step to prosecute the person or persons who have perpetrated this malfeasance; and

2. The SBA should provide Chairman LaFalce with any relevant information that he requests. This information should be provided as soon as possible after the request is received.

DEPOSITION EXHIBIT
Teckler 4
11-17-95 PZ

DEPOSITION OF JAMES B. BLAIR
IN RE: S. RES. 120

MONDAY, NOVEMBER 20, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Telephone deposition of JAMES B. BLAIR, called for examination pursuant to notice of deposition, at 6:20 p.m. in Room 535 of the Dirksen Senate Office Building, before JULIE BAKER, a Notary Public within and for the District of Columbia, when were present:

ROBERT J. GIUFFRA, JR., ESQ.
Majority Chief Counsel
ALICE S. FISHER, ESQ.
Majority Associate Special Counsel
LANCE COLE, ESQ.
Minority Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

THOMAS C. GREEN, ESQ.
MARK D. HOPSON, ESQ.
Sidley & Austin
1722 Eye Street, NW
Washington, DC 20004
On behalf of the Deponent.

CONTENTS

WITNESS	EXAMINATION
James B. Blair	
by Mr. Giuffra	7
by Mr. Cole	53
by Mr. Giuffra	61

3

PROCEEDINGS

MR. GIUFFRA: This is a telephone deposition being conducted pursuant to Senate Resolution 120. Senate Resolution 120 establishes a Special Committee administered by the Banking Committee of the United States Senate to conduct an investigation and public hearings involving Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, Capital Management Services, Inc., the Arkansas Development Finance Authority and other related matters.

This is the deposition of James B. Blair, B-l-a-i-r. My name is Robert Giuffra. I'm chief counsel of the Senate Banking Committee. With me on this end of the line are Alice Fisher, who is deputy special counsel to the Majority, and Lance Cole, who is deputy special counsel to the Minority staff.

If counsel for Mr. Blair would state appearances for the record.

MR. GREEN: Yes. My name is Thomas Green. My partner, Mark Hopson, also represents Mr. Jim Blair. We're with the firm of Sidley & Austin,

4

Washington, D.C.

MR. GIUFFRA: This is a deposition that is being conducted in advance of public hearings that the committee will hold right after Thanksgiving. Our procedure today, which is set forth in Senate Resolution 120, will be I will first propound a series of questions to Mr. Blair, and then the Minority counsel will be given an opportunity to ask questions. There may be subsequent rounds of questioning.

Mr. Blair will be testifying under oath. If at any time, Mr. Blair, you don't understand a question, let us know and we will rephrase the question. If you need a break at any time, again, let us know and we'll take a break.

The stenographer will prepare a record of the questions and answers. The deposition will be treated as committee confidential until the commencement of the public hearings. Prior to those hearings, you will be given a letter from the Committee advising you that you will be given an opportunity to look at the transcript and make

5

corrections. If you testify at the public hearing -- strike that.

We've agreed that we will provide counsel for Mr. Blair a copy of the deposition transcript and Mr. Blair's counsel will execute the standard confidentiality form that the Committee asks witnesses to execute.

Mr. Blair, you understand that you have the right to be represented by counsel. Objections to the form of the question will be noted for the record. Counsel may object on grounds of privilege and relevance. And the resolution specifies a procedure by which Chairman D'Amato, who is the Chairman of the Special Committee, will rule on objections in the event a witness refuses to answer.

This deposition, we've agreed, is being conducted by telephone. This deposition is being conducted pursuant to a request that was contained in a letter, I believe it was November 11 --

MR. COLE: 13th.

MR. GIUFFRA: Excuse me, November 13, 1995 by Robert Giuffra to counsel for Mr. Blair. We

6

agreed that this deposition would address Mr. Blair's knowledge with regard to the investigation or indictment of David Hale in the period May 5, 1993 through November 8, 1993.

We further have agreed and counsel can respond to this, that there in all likelihood will, in fact, be a subsequent deposition of Mr. Blair and that we have agreed for the convenience of both the Committee and Mr. Blair to conducting this deposition by telephone.

Is that a fair statement of what we've agreed?

MR. GREEN: That is our agreement modified by the caveat that we are going to -- you are going to interrogate Mr. Blair on the subject matter identified in the aforesaid letter.

MR. GIUFFRA: And potentially we may try to get into other areas on this phone call, depending on whether time permits, but we'll focus on what we specified in the letter.

MR. GREEN: All right.

MR. GIUFFRA: Mr. Blair, are you ready to

proceed?
MR. BLAIR: I am.
MR. GIUFFRA: We'll have the court reporter here in Washington swear in Mr. Blair. I'll state for the record that Majority and Minority staff have agreed that this is a permissible procedure, and counsel for Mr. Blair have agreed that it's also permissible from their standpoint to have the court reporter in Washington swear in Mr. Blair.
Is that fair with everyone?
MR. GREEN: It's agreed.
MR. COLE: Agreed by the Minority.
Whereupon,
JAMES B. BLAIR
was called as a witness and, having first been duly sworn, was examined and testified as follows:
MR. GIUFFRA: Let us begin.
EXAMINATION
BY MR. GIUFFRA:
Q Mr. Blair, if you would state your name for the record.
A My name is James B. Blair, B-l-a-i-r. I am

usually called Jim.

Q And your present business address?
A Is 3422 North College Avenue, Suite 3, Fayetteville, Arkansas 72703.
Q And your present position?
A I'm a lawyer.
Q And are you a lawyer in private practice or at a particular company?
A Well, I am in private practice. I am on retainer to and my chief client, but not my only client, is Tyson Foods, and I do serve Tyson Foods as its general counsel, but I am not an employee of Tyson Foods.
Q Other than your counsel, have you spoken with anyone about this deposition?
A I have not. I told my wife that it was going to take place.
Q Mr. Blair, when did you first learn of any sort of investigation involving -- strike that.
Do you know David Hale?

9

A I would probably not recognize him now, but I am sure that I met him some 20 years ago, and I know who he is.
Q What is your understanding as to who Mr. Hale is?
A Well, he is somewhat notorious and has allegedly committed a number of crimes, both federal and state, in and about the state of Arkansas.
Q And when did you first learn that Mr. Hale might be under investigation for committing these alleged crimes?
A I couldn't give you a time frame. I know that it's been common knowledge on the street, and it's been in the newspapers that the state wants to try him for stealing people's burial insurance and that the federal people want to try him or did want to try him for stealing money from some kind of SBA organization.
Q Do you have any recollection as to when you might have learned about a federal investigation of Mr. Hale with regard to an SBA organization?
A No, I don't.

10

Q During 1993, do you recall discussing any investigation of Mr. Hale with anyone?
A I have no specific independent recollection of any time frame, but I'm sure that I have talked to people about David Hale stuff, activities.
Q Do you recall discussing David Hale's activities -- strike that.
Do you recall discussing any possible criminal investigation of David Hale with Bruce Lindsey?
A I have no specific recollection of discussing David Hale with Bruce Lindsey, but it's very possible that such a conversation took place.
Q Do you know a man named Sam Heuer?
A I do.
Q Who is Sam Heuer?
A Sam Heuer is a lawyer who practices law in Little Rock, Arkansas and he became somewhat famous as the lawyer who defended McDougal when McDougal was tried in 1990 for various alleged crimes having to do with Madison Guaranty, and he successfully obtained McDougal's acquittal.

11

Q When did you first meet Mr. Heuer?
A Oh, probably 15 years ago. I can't -- I have no specific recollection of exactly when.
Q What is the nature of your relationship with Mr. Heuer?
A Well, I have -- he has at one time asked my help in trying to get a job and then decided he didn't want the job, and I have referred cases to him that were small cases that the big firms wouldn't handle. I have visited with him and dealt with him across the table as counsel would be opposing.
Q Do you have any recollection as to how many cases you might have referred to Mr. Heuer?
A I would say that it's less than five, but more than two.
Q Do you recall when you most recently would have referred a matter to Mr. Heuer?
A Yes. I sent him some local case having to do with some kind of calendar sale activity or referred the case to him, and I think these people did hire him.
Q Do you recall when that was?

12

A Oh, it's been within the last, I would say, three months.
Q Prior to that matter, when was the last matter you would have referred to Mr. Heuer?
A Oh, maybe nine months, a year ago, a matter out of Oklahoma, and I don't remember the nature of the matter, and I don't think they employed him.
Q Do you recall any other matters you might have referred to Mr. Heuer?
A Not specifically, but I vaguely think there may have been one or two others.
Q No recollection as to what those matters might have been about?
A They were petty -- I shouldn't say petty. People's legal affairs are not petty, but they were not big money cases. They were what the legal profession would regard as small matters.
Q And Mr. Heuer does not represent Tyson Foods in any matters?
A He does not, and to my best recollection has not.
Q Do you have any understanding as to whether

13

Mr. Heuer is now representing Jim McDougal?
A I am under the opinion that he is and it's been in the newspapers that he was, and I believe that he told me that he was -- told me he was going to.
Q Have you ever discussed David Hale with Mr. Heuer? And that's H-e-u-e-r.
A Yes.
Q And when do you recall speaking with Mr. Heuer about David Hale?
A I don't have any independent recollection of the time. It hasn't been this year, but that's about all that I can tell you.
Q Do you have any recollection about the substance of the communication you would have had with Mr. Heuer about David Hale?
A Yes. One of them was that Hale had supposedly been to see McDougal and tried to get McDougal to lie about various things that Hale wanted to claim was reality.
Q What was your understanding as to when Mr. Hale went to see Mr. McDougal?

14

A I honestly don't remember. It's been -- it hasn't been this year, but it would be somewhere between the summer of '92 and December of '94, but I can't give you a better date.
Q Do you know if it would have been before Mr. Hale was indicted?
A I would think so, but I'm certainly not positive.
Q Was Mr. Heuer present during this conversation between Mr. McDougal and Mr. Hale?
A I don't know the answer to that. I was not. I assume he was not, but I have no direct knowledge of it.
Q What was your understanding of what Mr. Hale wanted Mr. McDougal to say?
A I don't have any understanding. It was just that he wanted McDougal to falsely corroborate some of his allegations he was making to try to extricate himself from his difficulties.
Q Did you ever speak to Mr. McDougal directly about this conversation that he had with Mr. Hale?
A No, I did not.

15

Q You spoke to Mr. Heuer; correct?
A That's correct.
Q And Mr. Heuer -- what did Mr. Heuer indicate to you Mr. McDougal said during the course of this conversation with Mr. Hale?
A That McDougal refused to do it.
Q And why did Mr. McDougal refuse to -- strike that.
Did Mr. McDougal say anything about the statements that were being made to him by Mr. Hale?
A I wasn't present. I mean, I don't know what they -- their conversation was, and none of that was related to me that I recall.
Q Do you recall if it had anything to do with President Clinton?
A I would be inclined to say that anything I said about what it related to would be outright speculation. I just -- I don't recall.
Q Now, are you counsel to the Clintons?
A Well, I have been. At the present time, I believe that David Kendall is now their counsel, but I have been.

16

Q During what period were you the counsel for the Clintons?
A Well, on and off from 1974 maybe through 1992.
Q And you would have ceased being counsel to the Clintons sometime prior to January 20, 1993?
A Well, I don't know that there's any formalization of any of this. It was just at one point I thought I might be able to continue to represent the Clintons in some of these matters and then decided that it was better for the clients that they be represented by Washington counsel.
Q Do you recall any other conversations that you might have had with Mr. Heuer about David Hale?
A There may have been occasional references that came up about Hale that he managed to con the Independent Counsel Starr into believing some of his story and that he was being treated with kid gloves and the prosecuting attorney in the state was not being allowed to pursue his indictment on the -- but those were just general conversations.
Q Do you recall when those conversations

17

would have occurred?
A No.
Q Have you had any role with regard to paying Mr. McDougal's legal fees?
A No.
Q Do you have any understanding as to who was paying Mr. McDougal's legal fees?
A I'm of the opinion that Heuer's status is that of some kind of public defender and that he is being defended through the public defender program, but I don't have any specific knowledge of that.
Q Do you have any general knowledge?
A General knowledge -- well, that's more than I really know.
Q But as far as you know, you're not aware of any arrangements whereby third parties are paying any of Mr. McDougal's legal fees for Mr. Heuer's services?
A Not to my knowledge.
Q Let me direct your attention to the period September 1993.
A All right.

18

Q Do you recall any conversations with Mr. Lindsey during that period about Whitewater?
A I can't give you any time frame that would cover that and any specific recollection. I have had occasional conversations with Bruce Lindsey.
Q Do you recall any instances in which Mr. Lindsey asked you to contact Mr. Heuer with regard to anything having to do with either Whitewater or Madison?
A No, I do not. Not that I recall.
Q Do you know Brent Bumpers?
A I am sure that I've met him. I know who he is, but again, I don't think I would recognize him if I ran into him in a crowd.
Q And he is an Assistant U.S. Attorney in the Eastern District of Arkansas, Mr. Bumpers?
A I'm not sure about that, but that sounds like something I believe is true.
Q Do you know whether Mr. Heuer ever spoke to Mr. Bumpers about David Hale?
A I don't know anything about any conversations between Mr. Heuer and Mr. Bumpers.

19

Q And you have no recollection of -- strike that.

You don't recall ever communicating with Mr. Lindsey about a report that Mr. Heuer provided to you with regard to Mr. Hale?

A Not specifically. I mean, I occasionally passed on what I would call almost street gossip, but I have no specific recollection.

Q And you would have passed this information on to Mr. Lindsey?

A Yes.

Q Do you know Claudia Riley?

A I don't know that I've ever met her. I know that she is Bob Riley's widow. Bob was once lieutenant governor of Arkansas, and I know who she is.

Q Do you have any understanding as to whether Ms. Riley is a friend of Mr. McDougal's?

A My understanding is that both Rileys looked after McDougal until Bob died, and that she has continued to kind of look after him.

Q Do you recall speaking with Ms. Riley in

20

that September 1993 time frame?

A I don't believe I've ever spoken to her in recent years. I don't recall any such conversation.

Q Have you ever asked Mr. Heuer to speak to Ms. Riley on your behalf?

A I've never asked Mr. Heuer to speak to Ms. Riley on my behalf that I recall.

Q Do you know Fletcher Jackson?

A No.

Q If I told you he was an Assistant U.S. Attorney in the Eastern District of Arkansas, might that refresh your recollection?

A I have tried a case involving the U.S. Attorney's office in the Eastern District in many, many years, and there are lots of new young assistant attorneys, but to my knowledge, I've never met such a person, and I frankly don't know if he is Assistant U.S. Attorney.

MR. GIUFFRA: Off the record.

(Discussion off the record.)

BY MR. GIUFFRA:

Q Did you have any conversations about David

21

Hale -- strike that.
Do you recall any conversations you might have had about David Hale with Webster Hubbell?
A No, I don't. I mean, I don't believe I've ever had a conversation with Web Hubbell about David Hale.
Q Do you know whether you've ever had a conversation with William Kennedy about David Hale?
A I don't even know who Wayne Kennedy is.
MR. COLE: I believe he misunderstood you. He said Wayne. Maybe if you said Bill.
MR. GIUFFRA: Bill Kennedy.
THE WITNESS: I know Bill Kennedy, but I've not had any conversation that I recall, and I'm reasonably positive I've not had any conversation with him about David Hale.
BY MR. GIUFFRA:
Q You know James Lyons?
A I do.
Q Who is James Lyons?
A James Lyons is a fellow member of the American College of Trial Lawyers and he practices

22

law in Denver, Colorado.
Q Have you ever spoken with Mr. Lyons about David Hale?
A It's not impossible that I did. I don't have any specific recollection of it, but I have discussed Whitewater matters with Lyons, and it is possible that I discussed Hale, but I don't recall any such discussion.
Q Do you know Paula Casey?
A I know who she is, but again, I wouldn't recognize her if I met her in a crowd, and I don't believe I've ever had any conversation with Paula Casey.
Q Do you know Randy Coleman?
A No.
Q If I told that you he was David Hale's attorney, would that refresh your recollection?
A I believe I've read that in the newspapers, but I don't recall ever having met Randy Coleman.
Q Do you recall ever speaking with Randy Coleman?
A No. I'm relatively positive I've never

23

spoken to Randy Coleman.
Q You know Mack McLarty; correct?
A I do.
Q He was White House chief of staff in 1993; is that correct?
A No, I couldn't give you the dates. I mean, he was White House chief of staff. Panetta took his place, but I couldn't tell you when that occurred.
Q Do you recall ever speaking with Mack McLarty about David Hale?
A I don't believe so. My confidence level is 95 percent that I've never had such a conversation with him.
Q Do you know a man named Richard Mayes?
A Yes.
Q Who is Richard Mayes?
A He's another Little Rock lawyer.
Q And what's the nature of your relationship with Mr. Mayes?
A Well, I've run into him occasionally at social gatherings. I may have at one time testified for his firm as an expert witness in a case many

24

years ago. I do know Richard, I guess, when I see him, but I'm not extremely close to Richard.
Q You would describe your relationship with Mr. Heuer as closer than your relationship with Mr. Mayes?
A Yes, I would. I mean, I know Sam better, and I've seen him more often.
Q Have you ever discussed the setting up of a legal defense fund for Mr. McDougal with Mr. Heuer?
A I think that I have maybe heard some conversation about a proposal to try to raise money for McDougal. I never believed it was possible, and I've never had a serious conversation about that.
Q What recollection, if any, do you have about the setting up of --
A I think it may have been more of a joke-type thing, a casual remark that he couldn't keep working for McDougal and not get paid. And after he -- he defended McDougal as a public defender in the Madison Guaranty trial, and then he continued, to the best of my knowledge, to deal with McDougal as a client, but McDougal had no funds to pay him, and

25

as this whole matter would demand time, he was whining about how he didn't see how he could continue to represent McDougal and not get paid.

Q And you recall some discussion between the two of you of a legal defense fund for McDougal?

A Not any serious discussion. It was like gee, would this be a possible thing to do.

Q And do you recall anything further about those conversations?

A No. I mean, I said that in terms of crazy ideas, it was a highly crazy idea.

Q Why was it a crazy idea?

A McDougal is not a sympathetic character. You've got to have a woman who's got polio or crippled or something. I mean, you've got to have some kind of sympathy to create a defense.

Q Do you know Jack Palladino?

A I don't believe that I've ever met him. If I have, it's just been to maybe shake his hand and be introduced to him, but I have no idea what he looks like, and I don't believe I've ever met him.

Q And your testimony, you can recall no

26

conversation you might have had with Mr. Palladino about David Hale?

A No.

Q Do you know Betsy Wright?

A Yes.

Q Do you recall any conversations you might have had with Betsy Wright about David Hale?

A No, I do not.

Q Do you know Loretta Lynch?

A Yes.

Q Who is Loretta Lynch?

A Well, she is a lawyer who practices law in San Francisco or Los Angeles or somewhere in California and she's been involved in a number of political races out there including, I think, a race for somebody for superintendent of the school boards.

Q And did Ms. Lynch have a role with regard to Whitewater during the 1992 campaign, Clinton campaign?

A Yes.

Q And do you recall discussing David Hale on any occasion with Loretta Lynch?

27

A No, I don't. I don't believe the David Hale thing surfaced until after the campaign was pretty well over and Loretta had gone back to California.
Q You previously testified that it was your belief that Mr. Hale's allegations were false. Do you recall that testimony?
A Oh, yeah. My confidence level is very high that his allegations are false.
Q And what's the basis for your belief that Mr. Hale's allegations are false?
A Well, one, he has a reputation in the state of being untruthful, and you would suspect anybody with that reputation to begin with.
Q What's the basis for your understanding that he has an untruthful reputation in Arkansas?
A It's common knowledge in Little Rock. I'm 200 miles away from Little Rock, but you can go down the street and ask the first 10 people you see in Little Rock. He was a municipal judge or something down there that did not fit into the legal profession.

28

Q What are some of your other bases for believing that Mr. Hale is making false allegations?
A Number two was that he apparently is guilty of some very bad crimes, and for him to allegedly say -- I mean, it's based on what I've read in the newspapers. He allegedly said, according to the newspapers, that he would be willing to hand over more important people if they would let him go. Well, I mean, that's what --
Q Other than from newspaper accounts --
A Someone of his ilk and trouble can do.
Q Other than from newspaper accounts, do you recall ever discussing Mr. Hale's willingness to turn over other more important people?
A No. I think most of what I know about that was what I read in the newspapers. I don't recall any discussions with anybody about it.
Q Have you ever discussed David Hale with President Clinton?
A No.
Q Have you ever discussed David Hale with Hillary Clinton?

29

A No.
Q And when you say you've never discussed David Hale with President Clinton, that includes the allegations that David Hale has made about President Clinton?
A That's correct.
Q And what is your understanding of the allegations that David Hale has made about President Clinton?
A That Hale allegedly gave $300,000 of his small business capitalization company to an organization called Madison Marketing that was owned allegedly by Susan McDougal and that he now claims this was done because President Clinton asked him to, then Governor Clinton.
Q And you never discussed that alleged transaction with Governor Clinton?
A No, because none of that surfaced until after David Kendall had become the principal counsel for Clinton.
Q Do you recall any discussions with Mr. Kendall about David Hale?

30

A I would want Mr. Kendall to waive any privilege of any -- before I would discuss any conversations I had with Mr. Kendall whether I do or not.
Q You believe there might have been a period when you and Mr. Kendall were jointly representing the Clintons in '93?
A I believe that's possible.
Q So your position would be you would want to -- let me ask another question.
Do you recall whether you have had a conversation with Mr. Kendall about David Hale?
A No. I'm not going to answer any questions about whether I have or haven't had any conversation with Mr. Kendall about any subject whatsoever until there is some indication from him that protection he has of those conversation is waived.
Q Have you ever discussed David Hale with Bernard Nussbaum?
A No.
Q Have you ever discussed David Hale with Susan Thomases?

31

A I am reasonably confident I have not. I suppose that's not totally impossible, but I don't recall any such conversation.

MR. GIUFFRA: Could you hold just for one second?

THE WITNESS: Sure.

(Pause.)

BY MR. GIUFFRA:

Q Mr. Blair, I think you would agree that before you assert the attorney-client privilege, one, you have to establish the existence of an attorney-client relationship between yourself and the Clintons. But even beyond that, you have the issue of -- on a privilege log, you would identify, for example, when a communication occurred by date. You would identify with whom the communication was with, and you would identify the subject matter of the communication, and then you could assert the privilege because that goes to the substance of the communication rather than the fact of the communication?

MR. COLE: Mr. Giuffra, this is Mr. Cole

32

speaking. That would only be the case if there were a document that was being referenced in a privilege log. I don't think any lawyer lists every privileged oral communication in a privilege log.

MR. GIUFFRA: But if you're asserting the privilege, you have to at least identify -- it's one thing to say you're going to not testify about the substance of a communication, but to not say that you're going to discuss whether there was a communication is a far different matter.

MR. COLE: What I heard Mr. Blair say was that he wanted to seek guidance from Mr. Kendall as to what Mr. Kendall's position was, which I think is appropriate under the circumstances.

MR. GREEN: This is Mr. Green. We needn't argue about it because he's not going to answer the question.

MR. GIUFFRA: I think on the record we might as well try to establish it.

BY MR. GIUFFRA:

Q Is it your recollection, sir, in 1993 you were counsel to President and Mrs. Clinton with

33

regard to Whitewater matters?
MR. GREEN: He doesn't have to be counsel to Mr. and Mrs. Clinton with respect to that matter or any other matter. He has indicated that he provided legal advice to the Clintons. He's talking to another lawyer that provides legal advice to the Clintons. Those kinds of conversations are classically covered under a number of privileges and we're just wasting time by your going around the edges of this.
He has offered, I think, implicitly, if I heard him, if you want him to, to talk to Mr. Kendall and see what Mr. Kendall's views are, but it's 7:00 at night. Let's keep rolling to the meat of this thing.
MR. GIUFFRA: Just hold for one second.
(Pause.)
BY MR. GIUFFRA:
Q Mr. Blair, do you recall having any conversations with Richard Mayes about David Hale?
A No, I don't.
Q Do you have any understanding as to whether

34

Mr. Mayes ever represented Mr. Hale?
A That's news to me. I have no such understanding.
Q Do you know a man named Michael Johnson?
A I don't place him. I don't believe so.
Q If I told you he was in the U.S. Attorney's office in the Eastern District of Arkansas, would that mean anything to you?
A No.
Q Did there come a time when you learned that a search warrant was executed with regard to the premises of something called Capital Management?
A If I did, it would only be through reading the newspapers, and I don't recall specifically anything about a search warrant.
Q Did you ever discuss David Hale with Vincent Foster?
A Not that I recall.
Q Have you ever contacted anyone at the Eastern District of Arkansas U.S. Attorney's office either directly or indirectly -- strike that. Let me rephrase the question.

35

During 1993, did you contact anyone in the U.S. Attorney's office for the Eastern District of Arkansas about David Hale?
A No.
Q Did you indirectly contact anyone in the Eastern District of Arkansas U.S. Attorney's office with regard to David Hale?
Do you want to read the question back.
(The reporter read the record as requested.)
MR. GREEN: This is Mr. Green. I'm not sure how you indirectly contact.
BY MR. GIUFFRA:
Q Did you ever ask anyone to contact someone in the U.S. Attorney's office about David Hale in 1993?
A No.
Q Is that Mr. Green or is that Mr. Blair answering the question?
A That's Mr. Blair answering the question. I don't know anybody in the Eastern District U.S. Attorney's office. I haven't had occasion or involvement with him. I haven't asked anybody to

36

talk to him about anything.
Q Did you ever discuss -- did you ever ask Mr. Heuer to contact the U.S. Attorney's office in Arkansas about David Hale?
A No.
Q Did you ever -- strike that.
Do you know whether Mr. Heuer ever attempted to find out if Mr. McDougal would be indicted along with Mr. Hale?
A I was probably interested in that, but I didn't exert myself to find out about it. Again, it was kind of street gossip that it's typical in the legal community.
Q Have you ever discussed with anyone -- strike that.
Have you ever discussed with Mr. Heuer -- did you ever discuss with Mr. Heuer whether McDougal would be indicted along with Hale?
A That's certainly a possibility. I have discussed with Heuer at times whether McDougal was actually going to be reindicted after his first acquittal.

37

Q Do you recall when you first would have spoken with Mr. Heuer about the reindictment of McDougal?
A No. I mean, it would be sometime after the first Whitewater stuff got in the newspapers, and it would be before this year.
Q Do you recall anything about the substance of those communications?
A No. I again think it was just in generalities and just a gossipy-type conversation.
Q Do you recall reporting the results of your conversation with Mr. Heuer back to anyone either at the White House or anywhere else?
A I don't have any recollection of that. I'm not saying if I didn't hear something interesting, I might not have passed it on to Bruce Lindsey, but I have no specific recollection of that.
Q Do you recall ever discussing with Mr. Lindsey whether McDougal was going to be indicted along with Mr. Hale?
A I don't have any specific recollection of such a conversation. I wouldn't say it's impossible

38

that I had such a conversation.
Q Do you have any general recollection of such a conversation? Do you have any general recollection of such a conversation with Mr. Lindsey about whether Mr. McDougal would be indicted along with Mr. Hale?
A No, I do not.
Q Have you ever discussed -- strike that.
Do you know Jim Guy Tucker?
A Yes.
Q What's the nature of your relationship with Jim Guy Tucker?
A Well, I've known him for 20-some odd years, and I have supported him and dealt with him when he was a congressman, when he was the attorney general and occasionally in various political campaigns, and I've certainly dealt with him since he's been governor.
Q Have you ever discussed David Hale with Jim Guy Tucker?
A I don't think so, not that I recall.
Q Do you have any understanding -- strike

39

that.
Do you know whether Jim McDougal attempted to contact Vincent Foster during 1993?
A Yes, I believe he did.
Q What's the basis for your understanding that Mr. McDougal tried to contact Mr. Foster?
A My recollection is that Vince called me and said that McDougal had called him and he didn't want McDougal thinking that he could call up there, and I told him that I would deal with it. It wasn't necessary for him to be involved.
Q Do you know whether Mr. Foster spoke to Mr. McDougal?
A I don't know the answer to that. I know -- again, my recollection is Vince called me and he said that he didn't want McDougal thinking he could call up there. I don't know whether he actually spoke to him or not.
Q And did you have any understanding as to what Mr. McDougal was calling Mr. Foster about?
A It was about the tax returns of the Whitewater Development Corporation which I had agreed

40

to get produced, and he was complaining apparently because they weren't timely done.
Q So it would be your best guess that McDougal probably spoke to Foster?
A That would be pure speculation. I don't know.
Q Well, how would Mr. Foster know what Mr. McDougal was talking about if he didn't speak to him?
A Well, I don't think there were a lot of things he could be calling about, but I can't answer that.
Q When you indicated to Mr. Foster that you would take care of Mr. McDougal, what did you mean by that?
A That I would see that the tax returns were -- what I explicitly told Vince was I would see that the tax returns got prepared and delivered to McDougal's counsel.
Q And did you contact Mr. McDougal yourself?
A No, I did not. I contacted his lawyer.
Q Mr. Heuer.

41

When did you first learn -- strike that.
During 1993, when did you first learn that Mr. McDougal might be under investigation?
A I don't know. I had assumed that because he was acquitted in his first -- he was probably not under any kind of investigation.
Q Did there come a time in 1993 that you learned that $300,000 had been deposited in Mr. McDougal's bank account?
A I don't know that to this day. What I had heard was that Hale allegedly gave $300,000 to Susan McDougal under the name of Madison Marketing.
Q Have you ever discussed Madison Marketing with Mr. Lindsey?
A I don't believe so. I don't think so.
Q Do you know Susan McDougal?
A Yes.
Q Excuse me?
A Yes.
Q What is the nature of your relationship with Susan McDougal?
A I don't have a relationship with her, nor

42

have I ever had a relationship with her. I knew her as McDougal's wife when he ran for Congress against John Paul Hammersmith. She was somewhat active in the campaign.
Q Have you ever spoken -- strike that.
When was the last time you spoke to Susan McDougal?
A It's not been within the last four or five years that I recall.
Q Do you know who Mrs. McDougal's counsel is in her current -- at her upcoming criminal trial?
A My understanding is it's Jennifer Horan, who is the Arkansas public defender for the federal courts.
Q Have you ever spoken to Ms. Horan about the upcoming -- strike that.
Have you ever spoken to Ms. Horan about anything having to do with David Hale?
A I have not.
MR. GIUFFRA: Now might be a good time to deal with these other issues that I mentioned earlier.

43

MR. COLE: Before we ask about other issues, do you want to let me ask questions on this subject matter? And I have concerns on going into other issues depending on what the other issues you have in mind are.

MR. GIUFFRA: The other issues I have in mind are RTC referrals relating to Madison just with regard to the '93 period and '94 period.

MR. COLE: I don't think I would object to that. I don't think this is an appropriate time. I know Mr. Blair has produced documents to the Committee and I don't think that a telephone deposition is an appropriate time to go through a lot of documents and I didn't come prepared to do that.

MR. GIUFFRA: No, I don't have any intentions. Just as a way to expedite his next deposition.

MR. GREEN: Gentlemen, this is Tom Green. It's now -- we've gone an hour. Unless I hear Mr. Blair countermand me, which is his prerogative, it would be my inclination to have each of you finish your questions on the presently agreed upon subject

44

matter, and then if you find it necessary to reconvene this process again, we can do it at a later date.

MR. GIUFFRA: All right. Why don't I -- because I think this relates to his understanding with regard to the Hale matter.

BY MR. GIUFFRA:

Q Did there come a time in 1993 when you learned that there were criminal referrals -- RTC criminal referrals relating to Madison Guaranty?

MR. GREEN: This is Mr. Green. I don't know that that falls within the contours of our letter of understanding. But Mr. Blair, I'll leave it to you, if you want to delay responding to that or if you wish to answer that question.

THE WITNESS: No. I don't mind responding. I don't know a thing in the world about the RTC stuff except what I've read in the newspaper.

BY MR. GIUFFRA:

Q It's your testimony that no one ever discussed the fact that there were RTC criminal referrals relating to Madison during 1993?

45

A No.
Q Do you know Jean Hanson?
A I do not. I saw her on C-Span when she testified before your committee.
Q There's a document that you produced that bears Bates number 140 and 148.
A I don't have any documents in front of me so --
Q It's a document -- it's a memorandum to Congressman Leach from the Banking Minority staff, and then attached to it are a series of documents, including a letter from McDougal to Charles Campbell of the Security Bank and Paragould and some Whitewater Development checks.
Do you know where you would have obtained that document?
A I at one time developed and I have turned over to your committee everything I did develop regarding a Whitewater file in an effort to determine how much money that McDougal actually took out of Whitewater on the basis that the press was always focused on how much he put in, but they never paid

46

any attention to how much he took out. And I suspect that that document was collected, as I was in the process of collecting whatever I could on those matters.
Q Well, this is a document that bears a fax notation of February 3, '94.
A Again, that doesn't mean anything to me. I suppose I could look at the document and maybe could tell from the fax number or whatever where it came from, because it's a document of public record, is it not?
Q No, it appears to be an internal memorandum.
MR. COLE: Do you know for a fact, Mr. Giuffra, that that was not released to the public at or prior to the time it was transmitted to Mr. Blair according to the fax line?
MR. GIUFFRA: I don't know what it is. That's why I was asking Mr. Blair.
THE WITNESS: No, I don't have any documents in front of me, so I just don't know.
BY MR. GIUFFRA:

47

Q Is there any way you could take a look at this document bearing Bates numbers 140 to 148?
MR. HOPSON: We have the documents here in Washington.
MR. GREEN: Jim, do you have any documents there?
THE WITNESS: Well, I can make an effort to see what I've got here. I haven't reviewed any documents in preparation for this, but I do have them in my file here.
BY MR. GIUFFRA:
Q I'm curious as to how you got this document.
A Again, it's speculation, but I would suspect it was from David Kendall, but I don't know. What's the Bates number again?
Q It's number 140 to 148.
A I don't know that I have -- I think my counsel have the documents with those Bates numbers, but I don't know that my file has those numbers, unfortunately, because those were produced through my counsel in Washington. So I can't find the

48

documents.
Q Maybe what we can do is fax you the document while Mr. Cole is asking questions.
A I have no objection to that.
Q What's your fax number there?
A I have to go look it up because I don't fax things myself, but hold on one second.
MR. COLE: Does this document have some relevance to the Hale matter, or is this just general interest, Mr. Giuffra?
MR. GIUFFRA: It may relate to the Hale matter.
MR. COLE: Is there something specific in it that appears to relate to the Hale matter?
MR. GIUFFRA: It's a discussion of Madison Marketing in the document.
THE WITNESS: Okay. The office fax is 501-290-7316.
MR. GIUFFRA: We'll fax it to you right now. I just have a couple more questions and then Mr. Cole will get his chance.
BY MR. GIUFFRA:

Q Who is Archie Schaffer?
A Archie Schaffer is a man, maybe not quite so young anymore, who is the director of governmental affairs for Tyson Foods.
Q Do you recall ever discussing David Hale with Archie Schaffer?
A No.
Q Mr. Schaffer is the husband of Beverly Bassett Schaffer, is that correct, former --
A That is correct.
Q Just a couple of matters. Do you recall any other conversations you might have had with Mr. Lindsey about David Hale?
A No. If I heard something on the street, I may have passed it on, or if I heard something from Heuer, I may have passed it on, but I don't have any recollection of anything other than what we've discussed, and that's not anything specific.
Q Do you recall any other conversations you might have had with Mr. Heuer about David Hale?
A Nothing, only general conversation like can you believe what David Hale is doing, or can you

believe what David Hale is getting away with, or something like that.
Q During 1993, what was the frequency of your communications with Mr. Heuer?
A They could have been as frequently as monthly. I don't think they were extremely frequent.
Q Those communications would have dealt with Whitewater matters?
A Not all of them, but certainly some of them would.
Q Do you recall any conversation you would have had with Mr. Heuer about Whitewater matters?
A No. I had conversations with him about the tax returns. I called him and told him I knew we didn't get them prepared when we said we would, and I would get them prepared, and I would see that they were delivered to him. And I called and told him that I would deliver them -- I had them in hand and I would deliver them shortly, and I did deliver them. That's all I recall.
Q And am I correct that with regard to Mr. Hale's indictment, you first learned that he

51

would be indicted from press accounts?
A I believe that to be true. I don't think I would have known it from anywhere else.
Q If I told you that he was indicted on September 21, 1993 --
MR. COLE: 23rd.
BY MR. GIUFFRA:
Q Excuse me, September 23, 1993, is that the first you learned he would be indicted?
A I would say that's basically probably true, but I don't know. I mean, I don't have any specific recollection of that. I would -- if I could go back and look at the newspaper clippings, I could tell you newspaper stories and I don't know how early there was speculation in the newspapers. And once there was speculation in the newspapers, there was certainly free gossip among the legal profession, but I couldn't unravel that without seeing the newspaper articles.
Q But you don't recall any -- you don't recall any discussions you might have had with anyone prior to September 23, 1993 about whether Hale would

52

be indicted?
A No, I have no specific recollection of any such conversation.
Q No general recollection?
A Well, I just -- I'm not saying it couldn't happen. I just -- but I have no memory of it happening.
Q And then with regard to whether McDougal would be indicted along with Hale, do you recall any conversations prior to September 23, 1993?
A Well, it's hard for me to put that together. I didn't know Hale was going to be indicted. Prior to that date, I don't know how I would have had any conversations that McDougal was going to be indicted along with him.
Separating that out, did I have any conversations that McDougal might be indicted, I can't put any time frame on any of that.
Q Again, it's your testimony that you have never spoken to President Clinton about David Hale?
A Not that I recall, and I don't believe that the Hale matter surfaced at the time that I would

have been talking to him about any of this.
MR. GIUFFRA: I've concluded, and if you could look at that fax when it comes in, that will be my last bit of questions.
EXAMINATION
BY MR. COLE:
Q Mr. Blair, this is Lance Cole for the Minority and I'm going to be as brief as I can because it's late, at least here. Mr. Giuffra has asked you a number of questions about your recollection of discussions, if any, that you might have had with Mr. Lindsey and Mr. Heuer. And there's a document that's been produced to the Committee that may bear on that. If you were here in person, I would put the document in front of you to see if the document refreshed your recollection.
Since I can't do that, I would like to read you -- describe the document for you and for the record and then read to you a few brief entries from it and ask you, after I've read them, if those entries refresh your recollection.
I don't want you to be disadvantaged by

having your deposition taken by telephone and not having an opportunity to see documents that you would have been able to see if you were here in person.
A I understand.
MR. GIUFFRA: Actually, let me ask a question. Have you ever discussed with anyone the existence of such notes?
THE WITNESS: Of what notes?
MR. GIUFFRA: Of notes indicating a conversation between yourself and Bruce Lindsey on September 20, 1993.
MR. GREEN: You mean -- this is Mr. Green. You mean discuss it with individuals other than counsel?
MR. GIUFFRA: Well, if you've discussed it with counsel, it's still --
MR. COLE: Mr. Giuffra, I'd like to do what -- I would like you to let me do what I let you do, which is conclude my questioning and if you have follow-up questions, you're welcome to do so.
MR. GIUFFRA: I want to make sure the record is set before you start describing a document

55

to him.
MR. COLE: I'm going to describe the document to him, just as if he were here I would show him the document. You're welcome to ask questions, but the procedure we follow is one counsel asks questions and the other counsel follows, and I didn't interrupt you during your questioning, so I'd like to complete my questioning.
MR. GIUFFRA: Not in all instances. My point is before you read a document to him, I'd like to know whether he's ever seen the document before and since he's not here, I think we have a bit of a problem.
MR. COLE: You can certainly --
MR. GIUFFRA: We should fax the document to him.
MR. COLE: I don't think under our confidentiality rules you can fax a document out of the Senate. In fact, I have some concern about -- since the document you just faxed was Mr. Blair's, I think we're probably -- we don't have an issue there, but I personally wouldn't, under our confidentiality

56

procedures, fax this document to Mr. Blair.
But I think I can read it to him, and I think after I've read it to him, if you want to ask him questions about whether he's seen it before, you can do that. But I don't think he can answer that until the document has been read to him. So why don't you let me read it.
MR. GIUFFRA: Read him the document.
BY MR. COLE:
Q Mr. Blair, this is a document that was produced to the Committee by Bruce Lindsey. It appears to be his handwritten notes. There's a date at the top of the document that says 9/20, and I'll tell you from his testimony, that's 9/20/93. And it says "2:30 p.m. Jim Blair." Excuse me. I moved the telephone so I'm closer to the speaker.
The first entry says -- and if Mr. Giuffra wants to follow along in case I fail to read Mr. Lindsey's handwriting correctly, he can certainly help me interpret it. The first entry appears to read "McDougal called Heuer to tell him that Hale had been to see him -- McDougal told Heuer that Hale had

57

'tried to get him to fabricate story about BC and JGT.'" And as I said, Mr. Blair, I'm only reading it to see if it refreshes your recollection.

I understand that entry to perhaps pertain to the discussion you've already described that you had with Mr. Heuer, but if that refreshes your recollection, please feel free to amplify your prior testimony.

A Thank you, Mr. Cole. It doesn't help a lot. As I think I've testified, I recall discussing with Heuer that Hale went to McDougal and tried to get him to fabricate stories. I don't think I phrased it quite that way, but the time frame, maybe that's an accurate time frame, but it doesn't help me remember it. I don't know.

Q I understand. I just wanted to read this and see if it helped you with your recollection. The second entry on the page reads "Gerth tried to get Sam Heuer to tell him where McDougal was. Heuer wouldn't." And we haven't questioned you about that, but if that refreshes your recollection about any discussions you had with Mr. Lindsey, again, please

58

feel free to --

A I've certainly had discussions with Sam Heuer about Jeff Gerth, and it is certainly very possible that I passed those on to -- or some of them on to Bruce Lindsey, but it doesn't -- Gerth periodically surfaces in Arkansas. There is a term that's used here, "to be Gerthed" means to have a false newspaper story written about you. I just don't -- it doesn't help me on the time frame.

Q And I think the entry that perhaps is most relevant to the matters that Mr. Giuffra was questioning you about is as follows: It says "Heuer asked Brent Bumpers -- asked whether indictment -- against Hale, not McDougal." And frankly, that entry is a little too cryptic for me to interpret. I'll let Mr. Lindsey at the appropriate time interpret his own notes.

But again, I'm reading it to you to see if it refreshes your recollection about any discussions you may have had with Mr. Lindsey at or about September 20th of 1993.

A Unfortunately, it does not.

59

Q And the same page of notes, and this is difficult because I can't show them to you, but near the bottom of the page, there's an entry that says "second call," and while one can assume from looking at the note this refers to a second call that Mr. Lindsey had with you, I don't know that. I'm just reading what's on the page, but it says "Sam Heuer called Claudia Riley. Letter of transmittal -- from accountant -- dated two or three days before the returns are filed," and then it continues to the next page and says "returns prepared for McDougal to file -- given to McDougal -- doesn't know whether McDougal filed returns."

A That does refresh my memory not as to time but to a conversation I believe I may have told Bruce Lindsey at one point that I had delivered Whitewater tax returns to McDougal counsel who told me that he had delivered them to McDougal.

I did not know and had no knowledge and still have no knowledge as to whether McDougal actually filed the returns or not.

Q Thank you. The next entry in the notes

60

reads "Fletcher Jackson -- in charge of case," and there's an arrow, and it says "immunity" and "immunity" is underlined and it appears to say "leaked" or "linked," but I think it's "leaked." And the next line says "McDougal might become target. Blair heard that $300,000 had been deposited in McDougal's account -- jumped pretty high," and "pretty" is underscored.

And I would again ask if that refreshes your recollection about any discussions you had with Mr. Lindsey.

A Unfortunately, it does not. It does not.

Q And you have no -- if I understand your testimony correctly, you just don't have a recollection as to timing, as to when you did discuss with Mr. Lindsey the things you do remember discussing, that being the preparation of the tax returns. You don't recall the time of that discussion?

A No, I do not. I don't know why it would be that late because I think that sometime after the returns were delivered, but I'm not even sure of that

61

anymore.
MR. COLE: I don't have anything further. Did you want to ask him some questions about these notes?
EXAMINATION
BY MR. GIUFFRA:
Q Mr. Blair, did you receive the fax?
A Yes, I did.
Q Do you have any recollection of receiving this fax -- this memorandum, excuse me, bearing Bates numbers 140 to 148?
A I have seen the fax before. I have read it. I am looking at something that shows a date of 2/03/94. That appears to be to a portion of a fax number and that wouldn't be the Treasury and that wouldn't be where I got it, and I can't tell you where I got it. I don't know.
Q But it would be your testimony that it was not faxed to you by anyone from the Department of the Treasury?
A I am very, very confident it was not faxed to me by anybody at the Department first.

62

Q Because the fax number is a Department of Treasury fax number, 622.
A No. I do not believe and am very confident it was not faxed to me by anybody from the Treasury Department.
MR. COLE: Is that the number it was faxed from or the number it was faxed to?
I'm sorry, Mr. Blair, I was actually asking Mr. Giuffra since he has the copy here.
THE WITNESS: He's a good person to ask. I don't know.
MR. GIUFFRA: I can't tell.
MR. COLE: I think we've established that none of us knows.
MR. GIUFFRA: I think that's all the questions I have, sir. Thank you for your cooperation.
THE WITNESS: Okay. You're very welcome.
MR. COLE: Thank you, Mr. Blair.

(Whereupon, at 7:48 p.m., the deposition was adjourned.)

JAMES B. BLAIR

CERTIFICATE OF NOTARY PUBLIC & REPORTER 64

I, JULIE BAKER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Julie Baker

Notary Public in and for the
District of Columbia

My Commission Expires SEPTEMBER 30, 1997

DEPOSITION OF BRENT BUMPERS
IN RE: S. RES. 120

MONDAY, NOVEMBER 20, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Telephone deposition of BRENT BUMPERS, called for examination pursuant to notice of deposition, at 4:40 p.m. in Room SR–B21 of the Russell Senate Office Building, before JULIE BAKER, a Notary Public within and for the District of Columbia, when were present:

LOUIS J. GICALE, ESQ.
Majority Deputy Special Counsel
NEAL E. KRAVITZ, ESQ.
Minority Principal Deputy Special Counsel
LANCE COLE, ESQ.
Minority Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

CHARLES J. SGRO, ESQ.
PAUL J. FISHMAN, ESQ.
U.S. Department of Justice
Tenth Street & Constitution Avenue, NW
Washington, DC 20530
On behalf of the Deponent.

CONTENTS

WITNESS	EXAMINATION
Brent Bumpers	
by Mr. Gicale	3
by Mr. Cole	40
by Mr. Gicale	45

3

PROCEEDINGS

MR. GICALE: Mr. Bumpers, do you consent to being sworn by the stenographer over the phone and having your deposition conducted in this manner?

MR. BUMPERS: Yes.

MR. GICALE: Then we'll have the stenographer swear you in over the phone.

Whereupon,

BRENT BUMPERS

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. GICALE:

Q Could you please state your name for the record.

A Brent Bumpers.

Q You're fading in and out, so have patience with us.

4

A All right.

Q And your present business address?

A Mine?

Q Yes. What's the U.S. Attorney's office present address?

A Little Rock.

Q What's that address?

A 425 West Capital Avenue.

Q And you're an Assistant U.S. Attorney in that office?

A Right.

Q How long have you been employed as an Assistant U.S. Attorney in that office?

A 14 years.

Q And are you assigned to a particular division or assigned to a specific area of cases?

A White collar criminal, general criminal division.

Q Mr. Bumpers, this deposition is being conducted pursuant to Senate Resolution 120. The resolution establishes a Special Committee administered by the Banking Committee to conduct an

investigation involving Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, Capital Management Services, Incorporated, the Arkansas Development Finance Authority and other related matters.

Section 1(b)2(c) of Senate Resolution 120 authorizes an investigation and public hearings into whether the Department of Justice has improperly handled RTC criminal referrals relating to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation.

It also authorizes an investigation into the sources and funding and the lending practices of Capital Management Services, Inc. and its supervision and regulation by the Small Business Administration including any alleged diversion of funds to Whitewater Development Corporation.

This deposition is being taken in advance of a public hearing which will continue next week. You are obviously testifying under oath. If you don't understand any questions, please let us know, and we will attempt to restate them or rephrase

them.

The stenographer is preparing a record of questions and answers. The deposition will be treated as committee confidential until the commencement of the hearings.

Prior to the hearings, you will receive a letter from the Committee telling you that you may come to the Senate to review the transcript of your deposition. Along those lines, we have previously made some arrangements for people who have been out of town, we've given them access to these depositions, and we can make similar arrangements for you.

We will give you an opportunity to make note of any corrections for transcription on an errata sheet. If you are called to testify at a public hearing, you will be permitted to have a copy of your deposition transcript four days in advance of your testimony.

You may be represented by counsel. I note that Mr. Fishman and Mr. Sgro are on the line representing the Department. Counsel may object on

7

the grounds of privilege or relevance and the Committee Chairman may rule on objections where the witness refuses to answer a question.

Mr. Bumpers, we've sent Mr. Fishman a letter -- faxed him a letter on November 13th and that was followed up by a subpoena wherein we sought to depose you by telephone with respect to all contacts you may have had with anyone about the David Hale investigation or indictment between May 5, 1993 and November 8, 1993.

Did you receive a copy of that notice?

A No.

MR. GICALE: Paul, did you fax a copy of that to him.

MR. FISHMAN: No, unfortunately I didn't, because he was furloughed by the time I got it.

MR. GICALE: That is the notice that we sent out to Mr. Fishman that did not apparently get to you, but --

THE WITNESS: That's fine. He told me over the phone.

MR. GICALE: All right.

8

BY MR. GICALE:

Q Now, going back to that time period between May 5, 1993 and November 8, 1993, did you have any discussions -- strike that.

Did you have any responsibility in the U.S. Attorney's office in Little Rock for the investigation of David Hale -- investigation or indictment of David Hale?

A No.

Q Did you have any discussions with Fletcher Jackson in that office about the investigation or indictment of David Hale?

A When was the indictment?

Q The indictment was in September of 1993.

MR. KRAVITZ: It was September 23rd.

THE WITNESS: Fletcher says he made a comment to me about the case. I think he says it was about a week before the indictment, but that's the only discussion I recall.

BY MR. GICALE:

Q What was the comment that he made to you about the case?

9

A He told me -- I don't remember. It was a comment he had made probably four or five times in 14 years I've been here. It's kind of a standing joke. He asked whether or not he was going to find any letters of support in the file from my father for David Hale.

Q Find any letters of what?

A Letters of support, something like that, letters in the big bank SBA loan fraud cases. I've had one myself which was a letter from virtually every member of the Arkansas congressional delegation trying to defend -- get his loan.

That's common practice apparently, fairly common, where members of the congressional delegation will write some sort of letter talking about how helpful it would be for this particular area, the economy of a particular area, if a certain project could get funded. Anyway --

Q So that was something he had said to you in the past -- approximately a week before Mr. Hale's indictment, and he said something similar to that to you?

10

A Yes. He said something like -- as we were passing in the hall, I guess he said -- he was getting ready to go indict David Hale and was wondering if he was going to find any letters in there from my father, any brief letters or something.

Fletcher and I handled an S&L case together a couple years ago, and there were two or three letters from members of Arkansas's congressional delegation. I don't believe one of them was from my father, but like I say --

Q Did he say anything else to you about the case?

A No, and I told him by the way, no, I'd be very surprised. As far as I know, they had no relationship whatsoever.

Q Now, prior to that conversation with Fletcher Jackson, were you aware that he was investigating David Hale and that he was about to seek an indictment of him?

MR. FISHMAN: I'm going to just ask if you could, Mr. Gicale. To separate that question into

11

two parts, because I think it's a little compound.
MR. GICALE: Okay.
BY MR. GICALE:
Q Prior to the conversation you just mentioned, were you aware of the fact that Fletcher Jackson was conducting an investigation of David Hale?
A I don't know. Probably. I recall being aware of it.
Q How did you know that?
A I don't know. I probably -- if that was one --
Q I can't hear you. You're fading out.
A Well, we have our grand jury staff meeting on Thursday prior to the monthly grand jury, and that's usually the first time I was aware of other -- that he was about to be indicted. Anyway, I guess the answer is if I was aware of it prior to that time, I don't remember being aware of it or how I became aware of it.
Q So if someone were to -- if Mr. Hale was indicted on the 23rd of September, the meeting would

12

be in August?
A No, no. If he was indicted on the 23rd of September, that was probably either a Monday or Tuesday. The meeting would have been the prior Thursday.
Q If Fletcher -- if there was an intention to indict him in August, then this would have come up in an August meeting as well; correct?
A He thought he was going to indict him in August?
Q Right.
A I guess it could have been.
Q Do you know whether or not you heard about that indictment in August of 1993?
A I have no earthly idea. I may have been aware of the David Hale investigation three or six months prior to then. It wouldn't have mattered. It was meaningless to me.
Q It was what?
A It was meaningless.
Q When you say you might have been aware as much as three or six months before, how would you

13

have been aware three or six months before if it was other than --

A I have no idea. I may have heard some chatter in the hall. I'm just saying, I think the point is even if I was aware of it, it was not meaningful to me, nor did I ever have any discussions with anyone about it outside of this office or within.

Q Specifically, did you discuss the investigation or the indictment with Paula Casey?

A Yes.

Q Did you know Paula Casey before she was appointed as U.S. Attorney?

A Yes.

Q When did you meet her?

A I first met her in law school. She was a year ahead of me in law school. We were mild acquaintances in law school.

Q And then you continued to be friendly --

A I talked to her -- I had -- any contacts I had with her for the next 10 years was no more than -- it was less than once a year.

14

Q And then there came a point in time when she went to work for your father's office?

A Right.

Q Did you have any more contact with her at that point?

A Probably closer to two or three times a year then.

Q So you did not discuss the David Hale investigation or indictment with Paula Casey; correct?

A No.

Q Did you discuss it with Michael Johnson?

A No. I'm talking prior to the time that the national press coverage started.

Q Then I guess we'll break this down. There was an article in the Little Rock paper, I believe, on the 23rd, September 23, 1993. Is that -- are you talking about prior to that point in time or prior to some later point in time in October when there was some additional press coverage?

A I'm just saying I have had, I'm sure, two or three brief conversations in passing with both

15

Paula and Michael about the David Hale case between September of '93 and September '95. None prior to September '95.

MR. FISHMAN: I'm sorry. I think you meant none prior to September '93.

THE WITNESS: '93 that's what I meant.

BY MR. GICALE:

Q When you say September '93, are you talking about after his indictment or prior to his indictment?

A Not just the indictment but the press coverage of his indictment.

Q So these conversations with Paula Casey and Michael Johnson occurred simultaneous to his indictment, after his indictment? When did they occur?

A Months later.

Q Months later?

A Yes.

Q Would that have been after Mr. Mackay was appointed from the Department of Justice?

A Mr. Who?

16

Q Mackay. Would that have been after Paula Casey recused herself from the matter?

A I'm trying to remember who Mr. Mackay is.

Q He was from the fraud section of the Department of Justice.

A Well, I don't know. I have no idea. I don't even recall any conversations I've had with Paula Casey about the David Hale indictment. I mean, generally, the discussion was more about the few discussions I've had with her. Maybe he just mentioned in passing, it was more about McDougal and the Madison Guaranty matters.

Q Can you give us an idea as to the time period in which you had those conversations with Paula and Michael other than from September 1993 to this period?

A You mean through September '93?

Q Yes.

A No, I can't even swear to you that I had any conversations with him other than very fleeting comments in the hall.

Q But --

17

A I was not part of any of this stuff prior to September '93 nor afterwards. Any discussions I may have had with him were just on a friendly basis, and I can't even remember the substance of any of those conversations that occurred, 20- or 30-second conversations, maybe two minutes, but it was not of any significance. It had nothing to do with my official line of work in the office.

Q Did you have any conversations with Fletcher Jackson about the Hale investigation or indictment or Madison after the indictment?

A No.

Q Did you have any conversations with anyone else in the office with respect to the Hale investigation, the Hale indictment?

A You know --

MR. FISHMAN: Let me clarify something here, Mr. Gicale, if I can.

MR. GICALE: Yes.

MR. FISHMAN: Are you asking him whether in passing he may have had conversations with Mr. Jackson or others in the office about the case

18

being in the newspaper or an anticipated indictment date or something like that?

MR. GICALE: I'm asking whether he had any conversations with anybody about the case.

MR. FISHMAN: I wasn't finished. Or are you asking whether he discussed the substance of the investigation?

MR. GICALE: No. I asked him whether he had any conversations with anybody.

MR. FISHMAN: At all?

MR. GICALE: At all.

MR. FISHMAN: Can I ask you what the relevance of that is?

MR. GICALE: Yes, because it will be a starting point in terms of asking questions in terms of what was said.

MR. COLE: Don't we also have an issue here, Mr. Gicale, about the November 8th cutoff date? I thought we had an agreement we weren't going beyond that.

MR. GICALE: I'm not asking for -- so it's understood, it's within that time period, between

19

May 5, 1993 and November 8, 1993.
MR. COLE: As much press coverage as there has been in Little Rock and elsewhere of the Whitewater/McDougal/Madison Guaranty matter, I'd be amazed if there hadn't been discussions in the hallway about this, but if there were discussions after November 8th, we should not be getting into them. It's not relevant.
MR. GICALE: I'm not suggesting that at this point.
MR. COLE: Does that help, Paul?
MR. FISHMAN: Not so much as whether it helps me. It's whether it helps Mr. Bumpers.
THE WITNESS: That will help. If the question is, I guess, limited to reflect that.
BY MR. GICALE:
Q The question is limited to reflect that. Do you want me to ask it again?
A Please.
Q Did you have any conversations with anyone else in the office other than Paula Casey, Michael Johnson and Fletcher Jackson with respect to the Hale

20

investigation or indictment between May 5, 1993 and November 8, 1993?
A Well, first of all, I'm going to have to crack the leading premise of your question. I'm not sure during that time period that I had any conversations even with those three on or about that other than the one I told you about with Fletcher.
Q Your answer is other than with Fletcher, you don't remember whether or not you had conversations with anyone during that time period about the Hale investigation or indictment?
A I don't know, but I do know that I did not have conversations of any substance or in connection with what this office was doing with the cases, period.
Q During this time period, did you discuss -- did you have any contact with Sam Heuer between May 5, 1993 and November 8, 1993?
A May 5, 1993 and November 8, 1993.
MR. FISHMAN: Mr. Gicale, can I ask who Mr. Heuer is?
MR. GICALE: He's an attorney in Little

21

Rock.
THE WITNESS: Did I have any contact with Sam Heuer?
MR. COLE: And I don't know if there's any issue here -- this is Mr. Cole speaking. I don't know what other clients Mr. Heuer might have in the U.S. Attorney's office, but I understand Mr. Gicale's question to be limited to matters limited by Senate Resolution 120 that is Whitewater/Hale/McDougal; is that correct, Mr. Gicale?
MR. GICALE: I don't want the substance -- if they're not related to the resolution, I don't want to know about the substance of them, but I want to know whether he's had any contacts with Mr. Heuer during that time period.
THE WITNESS: I see Mr. Heuer in the lobby -- in the first floor of this building probably twice a month and occasionally we'll chat up to maybe 20 or 30 seconds once a month but whether we did during that time period and whether we did about anything concerning these matters, I have no idea.
BY MR. GICALE:

22

Q Just to clarify something, you moved your offices between September and October of 1993; correct?
A If you know that, I wouldn't question it. That sounds about right.
Q So when you say you see Heuer, that's in the -- that's in the present offices you occupy?
A That would be since September '93.
Q Since October 1993?
A Okay, October '93, you're right, in this building.
Q Since October 1993, you see him several times a month. Is that what you said?
A No, it's not. I said once or twice a month, I would guess.
Q Prior to that time when you did not have offices in the same building, how frequently would you see him? And this is between May 8, 1993 and October 1, 1993.
A Closer to once every two or three months. I'd probably run into him in the federal courthouse building that often. I've never seen him socially or

23

under any other circumstances other than just happenstance meeting.

Q Is your relationship with him solely a business relationship, if you have a relationship with him?

A We really have no relationship. I've known him 10 or 15 years. I don't even know how I met him, but we've been acquaintances for 10 or 15 years, but we have no relationship, period. I can't even recall -- I think he may have defended cases that I prosecuted. I'm not sure about that.

Q Between May 8, 1993 and November 8 -- May 5, 1993 and November 8, 1993, did you talk to Sam Heuer about the Hale investigation or indictment?

A I have no earthly idea. It all depends on when the press coverage broke on the case, because I did not even draw any connection or know of any connection between David Hale, President Clinton and Madison Guaranty until the press coverage. To me, David Hale was nothing but some sort of municipal judge that was about to be indicted.

Q In September of 1993, did Mr. Heuer call

24

you and ask you whether there was going to be an indictment against Hale or Mr. McDougal?

A In September '93?

Q Yes.

A He may have, but I have no recollection of that.

MR. COLE: And Mr. Bumpers, just to be clear -- this is Mr. Cole for the Minority -- I guess what you were saying is that prior to the press coverage concerning President Clinton and Mr. Hale, that if you had received an inquiry from Mr. Heuer about Mr. Hale, it's not something that would have been meaningful to you and likely you wouldn't remember it or it's possible you wouldn't remember it now. Is that your point?

THE WITNESS: That's correct. If Sam says -- if he has some recollection of that, then I wouldn't be in any position to categorically deny it. Other than what he claims I might have told him, I can tell you what the parameters of my answer would have been if he did call.

BY MR. GICALE:

25

Q What was your answer if he did?
A I don't want to speculate on that. If you want to know whether I said something to him, I'll try to answer that, something in particular.
Q I asked you whether or not he called and asked you if there was an indictment between Hale or McDougal.
A I don't know. I just don't recall.
MR. FISHMAN: Did you say there was an indictment, meaning one had been returned?
MR. GICALE: No, whether one would be returned against Hale or McDougal.
THE WITNESS: I don't recall. If he says he did, I would be in no position to deny it. That's not an uncommon occurrence for a defense attorney to call over here and ask whether or not somebody is going to be indicted.
BY MR. GICALE:
Q Why would he have called you as opposed to Mr. Jackson?
MR. FISHMAN: Are you asking him to speculate?

26

MR. GICALE: Yes.
THE WITNESS: I don't know why. Maybe he considered me a closer acquaintance than Fletcher Jackson. I don't even know if they are acquaintances.
BY MR. GICALE:
Q Have there been other cases that you were not assigned to where Mr. Heuer has called you up and asked you whether or not a particular individual was going to be indicted?
A I just don't know. There may have been. I don't recall, but I have been called by defense attorneys I know on cases that were not mine wanting to know whether somebody was going to be indicted. I don't recall if they knew when they were calling it was not my case.
Q Would you refer them to the attorney handling the case or would you give them the information yourself?
MR. FISHMAN: He didn't say he would give the information at all, Mr. Gicale.
BY MR. GICALE:

27

Q Did you give them the information?
MR. FISHMAN: I'd note when Mr. Bumpers -- that he could tell you what he would have said. You haven't followed up.
MR. GICALE: I did. I did start to follow up and you interrupted me.
THE WITNESS: Well, go ahead. What was your question?
BY MR. GICALE:
Q Did you ever give anybody information as to whether or not anybody would be indicted? And we'll stick to the period May 5, 1993 and November 8, 1993.
A Are we sticking to matters involving the purview of your committee?
Q I'll go with that.
A Well, then --
Q Did you tell Mr. Heuer -- let's focus on this. In September of 1993, did you tell Mr. Heuer that Mr. Hale would be indicted but not Mr. McDougal?
A I have no recollection whatsoever of what I may have told him if he called. If he says I told

28

him that, that sounds like I might have speculated now because Sam -- maybe I might have speculated on that. I don't know.
Again, I just don't recall any such conversations, so maybe I better stick to that.
Q You might have speculated that Hale would be indicted and not McDougal?
A In what month?
Q September 1993.
A Again, I might have speculated that. I've been very vocal about these matters ever since the deluge of press coverage began, but if I'm not mistaken that may have been a few months later, more into 1994. So I just don't know. I can't answer your question specifically or even at all.
Q You indicated that the only conversation you recall having about this case with Fletcher Jackson was the passing conversation with him in the hallway about the potential of maybe a letter from your father in the file; correct?
A Right.
MR. FISHMAN: Just so we're clear, that's

29

in the loan file, not in the case file.
MR. GICALE: I understand. We're clear on it.
THE WITNESS: Right. I have a vague recollection of that conversation. Yes, I do.
BY MR. GICALE:
Q Do you recall whether Fletcher told you that Hale was being indicted versus McDougal?
A No, I don't.
Q Do you recall having sufficient information in September 1993 to state to Mr. Heuer at that time whether or not Hale would be indicted versus McDougal?
A No, I don't. I wouldn't have given him an answer anyway. I might have referred him to Fletcher but as a general policy matter, I would not have given him an answer to that question.
Q Just to clarify this, earlier you said you might have speculated and now you've said as a general policy matter, you wouldn't have given him an answer. I just wanted you to clarify what you mean by that.

30

A Any speculating I would have done would have been later or once this office recused.
Q Your office recused itself after he was indicted; correct?
A Yes, that's right, so I probably misspoke there saying I would not even have speculated whether or not someone was going to be indicted if they were under investigation by this office. I've done a lot of speculating on what might happen since we recused, but I would not have been speculate with Sam Heuer about whether or not a client of his was going to be indicted that was being investigated or still in this office.
Q That would have been your practice?
A Yes. I would have referred him to Fletcher if he had called and asked that question. Had I known that Fletcher was handling the case -- I'm not sure what point I even learned that. Again, I'm just speculating as to whether he even called.
Q I've been focusing on September of 1993. Did Mr. Heuer call you in August of 1993 about this case?

31

A You know, I cannot tell you one event that occurred in my life in either August or September '93, period. As far as I know, there was nothing meaningful about either of those two months. I have no idea.
Q Now, can you tell us what your present phone number and extension is in the office?
A Well, yeah. It's the number you called, 324-5681. Maybe Paul called it.
Q Paul called it. Now, this has been your number since you moved to the new offices or did you retain the same number after you moved?
A What's your question now?
Q Did you have a different number at the old office location?
A The prefix changed from 378, but I think the last four digits have been my extension for the last 14 years.
Q It changed from 378 to 324?
A I think that change, it was made a year or two before we moved over here. That was not in connection with the move, with the physical move.

32

Q So between May '93 and November '93, your phone number was 324-5681?
A Right.
Q And continues to be that number; correct?
A Yes.
Q Now, between May 5, 1993 and November 8, 1993, did you have any discussions with James Blair?
A No.
Q Between the same dates, May 5, 1993 and November 8, 1993, did you have any conversations with Webster Hubbell?
A No.
Q Do you know Turner Bowie?
A No.
Q August '93 through October 1993, do you know whether there were IRS offices that were located in the buildings your offices were located in?
A I don't know that. If there are, I don't know of any.
Q There were none that were collocated with the U.S. Attorney's space?
A IRS offices?

33

Q Yes.
A Not that I'm aware of.
Q Were there any IRS agents assigned to the U.S. Attorney's office in August, September and October of 1993?
MR. FISHMAN: What do you mean by assigned to the office, Mr. Gicale?
MR. GICALE: Assigned to work in the U.S. Attorney's office space.
MR. FISHMAN: At the whole time on the U.S. Attorney's payroll?
MR. GICALE: They're never on U.S. Attorney's payroll. They're assigned to work full-time in the U.S. Attorney's office space.
MR. FISHMAN: I have to clarify. Do you mean -- as you know, I believe you told me you were a former Assistant U.S. Attorney. IRS agents could be working in a trial and could be in the U.S. Attorney's office for a month full-time. Is that what you mean?
MR. GICALE: That's possible.
MR. FISHMAN: I know it's possible. I'm

34

asking what your question means.
MR. GICALE: It means were they working in U.S. Attorney's space in August, September and October of 1993. I'm not talking about coming in for a visit once a day. I'm talking about occupying offices for a significant period of time.
THE WITNESS: I don't know.
BY MR. GICALE:
Q Between May 5, 1993 and November 8, 1993, did you have any contacts with Governor Tucker?
A No.
Q What about --
A I'd see him at a function but not that I recall. I'd see him once a year someplace or another.
Q Did you discuss the Hale investigation or indictment with him?
A No.
Q Mr. Tucker has an attorney by the name of Mr. Haley. Are you familiar with him?
A Yes, I know who he is.
Q Between May 5, 1993 and November 8, 1993,

35

did you have any contact or discussions with Mr. Haley?
A No.
Q And during that same time period, did you have any contact or discussions with anyone from Mr. Tucker's staff about the Hale investigation or indictment?
A No.
Q Between May 5, 1993 and November 8, 1993, did you have any conversations with an individual by the name of Marsha Scott?
A Name of who?
Q Marsha Scott.
A Not that I'm aware of. I don't know a Marsha Scott.
Q During that same time period, did you have any conversations with Susan McDougal?
A No.
Q During that same time period, did you have any conversations or contact with Bruce Lindsey?
A No.
Q During that same time period, did you have

36

any contact or discussions with William Kennedy?
A No.
Q Randy Coleman?
A No.
Q Richard Mayes?
A No.
Q David Hale?
A No.
Q Steve Smith?
A No.
Q Bernard Nussbaum?
A No.
Q Cliff Sloan?
A No.
Q Steve Neuwirth?
MR. FISHMAN: Mr. Gicale, do you have any reason to believe Mr. Bumpers spoke to these people?
MR. GICALE: I don't know whether he knows them. That's why I'm asking.
MR. FISHMAN: I understand that. But I thought you told me you had specific reasons for wanting to depose Mr. Bumpers.

MR. GICALE: I do. I think it's relevant to ask whether or not he had contacts with these people.

THE WITNESS: Why don't you just read off a list of names?

MR. GICALE: I'm trying to do that.

MR. COLE: I think we were on Steve Neuwirth if we can just run through the list.

BY MR. GICALE:

Q Steve Neuwirth, Mr. Bumpers?

A No.

Q Maggie Williams?

A No.

Q Susan Thomases?

A No.

Q Did you talk to anyone at the Small Business Administration between May 5, 1993 and November 8, 1993 with respect to the David Hale investigation or indictment?

A No.

Q Did you talk to John Tisdale during this time period about the David Hale investigation or

indictment?

A No. I mean, why don't we shorten this. I didn't talk to anyone during that time period about the David Hale investigation or indictment, other than occasional, maybe a passing comment in this office.

Q I just have two more names. Did you talk to Betsy Wright about this matter?

A No.

Q Or Mack McLarty about this matter?

A No.

Q Did you talk to the Clintons about this matter?

A No.

Q Did you talk to anybody at the White House about this matter between May 5, 1993 and November 8, 1993?

A No.

Q Did you make any calls to the White House between May 5, 1993 and November 8, 1993?

A No, not that I'm aware of. I'm not aware -- as far as I know, I've never called the

39

White House for any reason.
Q Prior to Mr. Hale's indictment, did you talk to any reporters about the David Hale investigation or indictment?
A No.
Q Did you ever talk to Mr. Gerth?
A No, I don't think so. Maybe he might have called me by mistake or something. I passed him on to someone else.
MR. GICALE: If you could give me one minute, I'll be right with you.
Paul, we did not send a document request to him, but I assume he has no documents that would be responsive.
MR. FISHMAN: U.S. Attorney's office document request was sent to the entire office. Do you have some reason to believe that Mr. Bumpers --
MR. GICALE: No, I want to make sure we have that on the record.
BY MR. GICALE:
Q Mr. Bumpers, are you aware that a document request was sent to the U.S. Attorney's office?

40

A I vaguely recall seeing something like that on the E-mail.
Q And did you search your records to determine whether or not you had any records that were responsive to that request?
A Well, I responded. I didn't need to search any records.
Q And your response was that you had no records?
A Right.
MR. GICALE: I have nothing further at this point.

EXAMINATION

BY MR. COLE:
Q Mr. Bumpers, this is Lance Cole for the Minority. I'm going to be very brief, but I would like to clarify one thing because there was a good deal of speculation in both Mr. Gicale's questions and your answers concerning whether or not you had any contact with Mr. Heuer during the time period in 1993 that Mr. Gicale specified.
What I'd like to do is clarify what I

41

understood your testimony to be with a few questions.

A All right.

Q And I'd like to focus your attention on the period of time prior to the indictment of Mr. Hale on September 23, 1993 and I believe that the record is that a newspaper article appeared in the Arkansas newspaper on the same date, so we can use that date as a benchmark.

Prior to that time, it's your recollection that you did not speak with Mr. Heuer about anything involving Mr. Hale or Madison Guaranty; is that correct?

MR. GICALE: I don't believe he said -- that's not what the record reflects.

MR. COLE: That's my question.

BY MR. COLE:

Q Do you have any recollection of speaking with Mr. Heuer about David Hale or Madison Guaranty or Mr. McDougal prior to September 23, 1993, Mr. Bumpers?

A No, I don't.

42

Q And I want to be clear on this because I think there could be some confusion earlier as to whether or not there's been any testimony from Mr. Heuer or others that you did. I want to tell you that's not the case.

We do have some handwritten notes that are handwritten notes by one person of what another person, according to these notes, said that Mr. Heuer had asked you about this matter, and that's the basis for these questions, and I don't know whether that gives you any greater confidence in your recollection or not, but there has not been any testimony from Mr. Heuer or otherwise that you had a discussion with him.

A Like I say, it's -- I've had numerous discussions with Sam Heuer about Jim McDougal and like I say, on the first floor of this office building, Sam -- just because we're acquaintances and as you know, he represented Jim McDougal in the first indictment that went to trial and then we had discussions, I remember, at some point he told me he no longer represented McDougal, but I'm thinking that

43

was only maybe a year ago. Now I think he's been reappointed. That was prior to the McDougal indictment and probably after the Hale indictment.

Like I say, the David Hale case, as far as I knew, had no connection whatsoever to McDougal. At some point, and I don't believe that first story that you're talking about drew the connection. Maybe it did. I don't know. But here again, I'm rambling, but I don't recall having any conversations with Sam Heuer prior to the David Hale indictment, if that's the question.

Q And if Mr. Heuer had asked you about Mr. McDougal and Mr. Hale and whether one or both of them would be indicted in connection with the Hale investigation, before that investigation was made public through Mr. Hale's indictment or a newspaper article, was it your testimony that you would not have provided him any information about the Hale matter?

A Right. I mean, I might have provided him information that Fletcher Jackson --

Q You might have referred him to Fletcher

44

Jackson?

A Referred him to Fletcher. I think -- I assume he would have known that Fletcher was handling that case. Unless it was common knowledge that -- not necessarily common knowledge, but unless I knew he had knowledge that there was an investigation on Hale, I wouldn't have admitted or denied that there was an open file in our office on David Hale.

Q That was my question.

A So I just can't -- this is all pretty speculative.

MR. KRAVITZ: Mr. Bumpers, this is Neal Kravitz also with the Minority. I want to say, so the record is absolutely clear and not misleading in any way, there is no evidence in our record, no testimonial evidence, no documentary evidence which indicates that you gave any information about this case to Mr. Heuer. There are some notes that are like third level hearsay, which indicate that Mr. Heuer asked you a question about the case --

MR. GICALE: Now --

MR. KRAVITZ: Hold on.

45

MR. GICALE: I can make an objection.
MR. COLE: If he were here, we could show him the document and ask him about it.
MR. GICALE: I'm going to make an objection.
MR. KRAVITZ: You made your objection. Now I'm going to go on. I want to make sure that the record is not misleading based on the questions that were asked and the speculation that you made -- that you gave us in response to those questions. And that's all that really needs to be said.
MR. GICALE: Are you done? I have two more questions.

EXAMINATION

BY MR. GICALE:

Q Just so the record is absolutely clear, we are referring -- there is a note which says "Brent Bumpers asked whether indictment against Hale not McDougal." That's the note we've been referring to and that I was questioning you about earlier.

A Who wrote the note?

MR. COLE: Actually, you left out something

46

when you read.
MR. GICALE: "Heuer asked" --
MR. COLE: It's a note written by Bruce Lindsey and appears to be notes of a discussion with Jim Blair and there's an item in the notes that says "Heuer asked Brent Bumpers asked whether indictment -- against Hale not McD," for McDougal, and I read that to you because if you were here, we would show you the notes.

BY MR. GICALE:

Q And I'm not trying to hide that from you. Now that we've read that to you, does that refresh your recollection as to whether or not you had a conversation with Sam Heuer --

A No, not at all.

Q -- about this?

MR. FISHMAN: Can I ask, are the notes dated?

MR. COLE: Yes, they're dated 9/20, but that doesn't necessarily -- the notes cover many topics and that doesn't necessarily indicate what the date of this possible contact between Mr. Heuer and

47

Mr. Bumpers was other than presumably, it was prior to 9/20 which is the date of the notes.
THE WITNESS: I'm not clear on what the note says or what your interpretation is.
MR. GICALE: What the note says -- and I'll read it again -- it says "Heuer asked Brent Bumpers -- asked whether indictment" -- and I believe that's a dash -- "against Hale, not" -- and it says M-c-D, and we assume that means McDougal.
MR. COLE: And just to be clear, you have to tell him --
THE WITNESS: Fine. The question is, is there some indication of the answer to the question?
MR. KRAVITZ: No.
MR. GICALE: I'm reading to you the note that we've been referring to, one of the lines from that note.
THE WITNESS: I'm wondering if in yours or somebody's opinion that note indicates or reflects a question and answer.
MR. KRAVITZ: No, it doesn't. That was the point I was trying to make earlier. There's no

48

indication anywhere in our record that you provided any information and to the extent that earlier questions implied that we had such information or could be interpreted as implying that, I just wanted to make sure that the record was clear that we have no such evidence or implication in our record.
The only thing we have is that one note, third level hearsay that was just read to you.
BY MR. GICALE:
Q What we have is this note. You do not have a recollection of a conversation with Mr. Heuer that we just referenced?
A No.
Q One last question. Did you talk to anybody about the substance of your testimony prior to testifying here today?
A Well, I don't quite understand that question. I told a lot of people I was to be deposed over the phone, and I speculated as to what you might be asking and I speculated that I didn't see how it could go over five minutes.
MR. COLE: Well, you got the answer to that

question, I think.
BY MR. GICALE:
Q You say a lot of people. Who did you talk to about it?
A Who did I tell that I would be deposed today?
Q Yes. And who did you talk to about what you thought you would be asked?
A Four or five people that I don't think is relevant.
Q Who were they?
A Like I say, I don't think it's relevant. You want me to tell you?
Q Yes, I would like you to tell us.
MR. FISHMAN: The witness is obviously reluctant to do that, Mr. Gicale. It sort of surprises me as to other individuals as opposed to the substance of his testimony.
THE WITNESS: I don't want to sound like there's anything I'm hiding. My wife, my sister, who I happened to talk to on the phone today, Paula Casey, who I already knew from talking to Paul --

anyway. I don't think that's responsive to your question.
BY MR. GICALE:
Q Those are the only people you talked to about the substance of your testimony today?
A There's probably three or four more, but I don't want to have to think about it. I don't see the relevance of it. It's not the substance of my testimony. I told them I was going to be deposed and that's virtually --
Q You didn't talk to them about the substance of your testimony, just the fact that you would be deposed?
A Could have. I didn't know what the substance of my testimony might be.
Q I think you said earlier you were speculating about what you would be asked.
A Right, and more than that, speculating as to why I would be deposed. I had no official --
Q I'm sorry, I didn't hear that. You faded out.
A That's all right. It's nothing.

MR. FISHMAN: He said he had no official connection to these matters.

MR. GICALE: I have nothing further.

MR. COLE: I have nothing further.

MR. KRAVITZ: Thank you very much.

MR. GICALE: Thank you.

MR. KRAVITZ: Sorry to bother you.

THE WITNESS: Okay.

(Whereupon, at 5:41 p.m., the deposition was concluded.)

BRENT BUMPERS

CERTIFICATE OF NOTARY PUBLIC & REPORTER 52

I, JULIE BAKER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Julie Baker

Notary Public in and for the
District of Columbia

My Commission Expires SEPTEMBER 30, 1997

DEPOSITION OF CECILIA RYKER SEAY
IN RE: S. RES. 120

MONDAY, NOVEMBER 20, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of CECILIA RYKER SEAY, called for examination pursuant to notice of deposition, at 10:07 a.m. in Room 534 of the Dirksen Senate Office Building, before PATRICIA A. ZUBER, a Notary Public within and for the District of Columbia, when were present:

LOUIS J. GICALE, ESQ.
Majority Deputy Special Counsel
GLENN F. IVEY, ESQ.
Minority Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

CONTENTS

WITNESS	EXAMINATION
Cecilia Ryker Seay by Mr. Gicale	3

PROCEEDINGS

Whereupon,

CECILIA RYKER SEAY

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. GICALE:

Q Could you please state your name for the record.

A Cecilia Ryker Seay.

Q And how do you spell your last name?

A S, like in Sam, e-a-y.

Q And what is your present business address?

A 401 West Capital, Suite 509, Little Rock, Arkansas 72201.

Q Now, who do you work for?

A I work for myself, but I'm under contract with the Small Business Administration as a receiver's agent.

Q Are you presently the receiver for Capital

Management? The agent, I'm sorry.

A Agent for Capital Management, yes.

Q Do you work for the SBA on any other matters currently?

A I have six receiverships that I work on.

Q And how long have you been working as a receiving agent for the SBA?

A Since June of '88.

Q Do you work for them on a full-time basis, or do you have other clients as well?

A I have other things that I do also.

Q Where else are you employed?

A Well, I'm an attorney, and I have -- we have other things in the office besides just this, although this is my primary focus right now.

Q What's the name of the law firm you are associated with?

A Streett with two Ts on the end, S-t-r-e-e-t-t, & Seay.

Q And what kind of a practice is that?

A We primarily do anything associated with educational law. A lot of IDEA work, ADA, 504.

5

Q Ms. Seay, this deposition is being conducted pursuant to Senate Resolution 120. The resolution establishes a special committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, Capital Management Services, Incorporated, the Arkansas Development Finance Authority and other related matters.

Section 1(b)(2)(b) of the resolution authorizes the Committee to conduct an investigation and public hearings into and study of matters developed during and arising out of the investigation and public hearings concluded by the Committee on Banking, Housing and Urban Affairs prior to adopting the resolution including whether the White House has engaged in improper contacts with any other agency or department in the government with regard to confidential RTC information relating to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation.

And pursuant to section 1 (b)(3)(e) to

6

conduct an investigation and public hearings into and study of all matters that may have any tendency to reveal the full facts about (e), the sources of funding and the lending practices of Capital Management Services, Incorporated and its supervision regulation by the Small Business Administration including any alleged diversion of funds to Whitewater Development Corporation.

These sections will be the focus of today's deposition. This deposition is being taken in advance of a public hearing which will continue on starting next week. We will be asking you a series of questions. You obviously are testifying under oath. If you do not understand a question, let us know and we will rephrase it.

The stenographer will prepare a record of questions and answers. The deposition will be treated as committee confidential until the commencement of the hearings.

Prior to the hearings, you will receive a letter from the Committee telling you that you may come to the Senate to review the transcript of your

7

deposition and make notes of any corrections for transcription on an errata sheet. If you are called to testify at public hearing you will be permitted to have a copy of your deposition transcript four days in advance of your testimony.

You may be represented by counsel. And I note that you are here alone today. Objections to the form of questions will be noted for the record. Counsel may object on the grounds of privilege or relevance. The Committee Chairman may rule on objections when the witness refuses to answer a question.

Do you have any questions at this point?

A No, I don't.

Q Now, are you aware of the fact that the Committee has made a request for documents from the SBA related to Capital Management and David Hale?

A Yes, I'm aware of that.

Q Have they asked you to supply any documents that were relevant to that request?

A Everything that I have at SBA, if they've asked for it, they've received it. There's been

8

miscellaneous requests of various things over the past two years, and I've provided it.

Q Did you speak to anyone about the substance of your testimony today?

A No.

Q When did you first become involved as a receiver's agent with Capital Management?

A Right after the entry of the receivership order, September, I believe, 15th was when the order was entered, and I was called.

Q And could you briefly describe your duties as a receiver's agent.

A I handle the -- well, I'm the -- how do I put it -- management and liquidation of the corporation's assets for the benefit of the SBA.

Q And what specifically does that entail?

A After the entry of the receivership order, I go out and collect all of the files and records of the company, transfer the bank accounts and proceed to make an investigation into the files to see what assets remain viable in the corporation that could be used to liquidate -- to be liquidated to recover

9

money for SBA.
Q Now, pursuant to your duties in this matter, did you have occasion to contact the FBI in Little Rock with respect to records?
A Oh, yes.
Q And did you work or contact a Mr. Irons for the FBI in that office --
A Yes.
Q -- with respect to Capital Management?
A Yes, I did.
Q On September 28th, 1993, did you have a conversation with Agent Irons where you advised him that you were attempting to obtain all the reports of Hale's SBA company and that you needed a list from the FBI of what was missing from the records SBA turned over to the Bureau?
A I don't specifically recollect it on that day. That's been a while. I know that we spent some time trying to make sure we had all the records that we needed or that there were. There was a lot of communication back and forth with the FBI about records.

10

Q Did you tell Irons in late September that you intended to interview or depose Hale and that you continued to demand all records from him?
A I'm sure that was said because we did in fact interview and make demand.
Q Do you recall whether or not on September 28th or some date in late September or early October, do you recall whether or not Agent Irons indicated that he had some concern with respect to some media reports on the case and some comments of Mr. Teckler from the SBA?
A Not to me.
Q Did Agent Irons ever indicate to you that Mr. Teckler from the SBA was not helping matters by stating certain activities were not criminal in nature when they did not have all the facts?
A Not to me.
Q To anyone that was working with you?
A There's -- I was the only person working in the receivership portion of it. No one would -- no one discussed that with me.
Q Did you ever say to Agent Irons that you

had spoken to the SBA in Washington, possibly Mark Stephens, and understood officials from the White House had urged the SBA to make such a characterization due to the mention of Whitewater Development in some news accounts and the White House's desire to avoid any inference that criminal activity could have occurred in relation to Whitewater Development in Hale's company?

A Repeat that. I'm not sure I understand the question.

Q Did you ever tell Agent Irons that you had spoken to the SBA in Washington, possibly Mark Stephens from that office --

A Okay.

Q -- and said to Irons that you understood that officials from the White House had urged the SBA to make a characterization and that characterization being the fact that certain activities were not criminal related to Capital Management and Whitewater --

A I can already tell you nobody has told me anything that's come from the White House and I

haven't characterized anything to anybody about the White House. So I don't even understand the question completely.

Q Let me go through it again.

A Okay.

Q Did you advise Irons that you had spoken to SBA officials in Washington, possibly Mark Stephens, and did you tell him that you understood -- did you tell Irons that you understood that officials from the White House had urged the SBA to make such a characterization.

When I say "such a characterization," I'm talking about a characterization that certain activities were not criminal in nature due to the mention of Whitewater Development in some news accounts and the White House's desire to avoid any inference that criminal activity could have occurred in relation to Whitewater Development and Hale's company?

A I don't believe so.

Q When you say you don't believe so, does that mean there is some possibility you discussed a

13

conversation you had with somebody at the SBA with respect to the White House's desire as to how this matter should be explained to the media?

A No. There's no confusion there. I didn't talk to anybody about that. I mean nobody would talk to me about that. It's not within my job description.

Q Did you ever talk to Irons about statements Teckler had made to the press about Capital Management and its relationship to Whitewater Development?

A And say that one again.

Q Did you ever talk to Mr. Irons about Teckler's statements to the press with respect to whether or not criminal activity -- certain acts were criminal in nature with respect to Whitewater Development and Hale's company?

A No. I haven't had any conversations that I know of with anybody about Mr. Teckler's comments. Frankly, I don't know what Mr. Teckler's comments were.

MR. GICALE: Can you go off the record for

14

a second.

(Discussion off the record.)

BY MR. GICALE:

Q I'm going to show you what's marked for identification as OIC number 001030 and some memorandum to the SAC Little Rock from SSA Steven D. Irons. And I'm specifically going to direct you to the second paragraph of that memorandum. Could you please read that paragraph.

A "Writer mentioned the media" --

Q No, read it to yourself.

A Oh, I'm sorry.

(Witness reviewed the document.)

Q Have had you an opportunity to read it?

A Yeah.

Q Okay. So that I can reference it, that paragraph states as follows. "Writer" -- and this is referring to Mr. Irons -- "mentioned the media reports of SBA Spokesman Teckler's comments concerning the case and noted Teckler was not helping matters by stating certain activities were not criminal in nature when he did not have all the

15

facts. Seay advised she had spoken to SBA in Washington (possibly Mark Stephens), and understood officials from the White House had urged SBA to make such a characterization due to the mention of Whitewater Development in some news accounts and White House desire to avoid any inference criminal activity could have occurred in relation to Whitewater Development and Hale's company."

Now, you've read that paragraph?

A Right.

Q Is that true?

A I haven't got a clue. I don't remember saying that.

Q When you say you don't remember saying it, is it possible that you said that?

MR. IVEY: Well, just on the record, I understand that you want to press her and make sure that she's exhausted her recollection on this point, but from watching her give her answers, it's clear to me that that is the case. And you've asked her that four times and you have shown her the document. You've asked her two or three times without showing

16

her the document, I mean she said no at least four times.

MR. GICALE: And again, I don't want to overdo this, but she's kind of answered it different ways, and I just want to make sure that's the case. If it didn't happen --

THE WITNESS: Can I clarify something?

BY MR. GICALE:

Q Yes.

A I don't believe I've ever had more than one conversation with Mr. Irons, maybe two at the most, and I certainly don't remember giving any kind of official statement about anything that SBA -- you know, their position on anything.

Q But to be quite specific, you don't remember making this statement?

A I do not remember making that statement.

Q Did you make the statement?

A I haven't -- I don't believe so. I mean I don't remember. I don't remember making that statement, but I don't think I did. I would never represent to anybody some position that the SBA had

17

on something like that. It's not within my purview.
Q Did you have any conversations with Mr. Stephens or Mr. Teckler or anyone at the SBA about comments being made to the media by the SBA with respect to this case?
A With Steve -- I mean with Mark Stephens, we were told that any comments to the media were to be directed to Stephens or Teckler.
Q Mark Stephens told you that?
A Mark Stephens told me to direct any media inquiries to either Mark or Marty Teckler.
Q At what point did he tell you that?
A I believe it's from almost the very beginning.
Q Is that because you had been contacted by the media?
A No.
Q And again, this was conveyed to you by Mark Stephens; correct?
A I believe it was Mark Stephens, yes.
Q Was Mark Stephens your contact throughout this?

18

A Most of it, yes.
Q Did you talk to Mr. Teckler as well?
A No.
Q Is there anyone else you worked with?
A Tom Morris.
Q Did you talk to Mr. Morris at all about press and media?
A If I did, it was just at about the same time and just, he may have reaffirmed Mark's comments to direct everything to Teckler.
Q Did either Morris or Stephens talk to you about the White House's position on the issue of Whitewater and Capital Management?
A No.
Q Did either Morris or Stephens talk to you about what Mr. Teckler was saying to the press or what the SBA as an agency was saying to the press about Capital Management and Whitewater Development?
A No.
Q Did you ever see on television or read in newspaper reports or listen to any radio reports by Teckler with respect to Capital Management?

19

A I'm sure at the time that it occurred, I probably did because I was clipping newspaper clippings, although I didn't always read all of them. But I frankly don't remember right now anything in particular.
Q Do you recall any instances where you were aware of a media report dealing with the relationship of Whitewater to Capital Management?
A A media report dealing with Whitewater and Capital Management?
Q Yes.
A There's been several, yes, lots of newspaper articles.
Q Would those have -- would you have clipped some of those articles?
A Uh-huh, I have several notebooks full.
Q And did you ever discuss those with Mr. Irons?
A No, I don't believe so.
Q Did you ever discuss them with anyone at the FBI's office in Little Rock?
A Oh, I might have had a conversation -- it

20

would have been casual -- with David Reign. He's been my major contact. Like I said, I've never spoken to Irons, but maybe one long conversation and one brief one, if I'm even remembering that right.
Q Well, the paragraph I had you read earlier on the memo dated October 1st, 1993, starting with the words "writer mentioned the media reports," this is again document OIC 001030.
(Witness reviewed the document.)
A Okay.
MR. IVEY: I'm sorry, what was the question?
BY MR. GICALE:
Q I'm just referencing the document again. I haven't finished.
A I don't remember making and having this conversation. I just --
Q Would you have had this conversation with Mr. Reign?
A That's a possibility, but it would not have been in this format. David Reign and I have a casual relationship and we talk a lot.

21

Q Well, did you talk to David Reign about Teckler's comments to the press?
A No, not that I know of.
Q Did David Reign express some concern that Teckler was not helping matters by stating certain activities were not criminal in nature when he, Teckler, did not have all the facts?
A I don't remember David Reign ever saying anything like that.
Q Did you advise David Reign that you had spoken to SBA in Washington, possibly Mark Stephens, and understood officials from the White House had urged SBA to make such a characterization due to the mention of Whitewater Development in some news accounts and the White House desire to avoid any inference criminal activity could have occurred in relation to Whitewater Development and Hale's company?
A No.
Q Now, other than Reign or Irons, is there anyone else at the FBI in Little Rock that you talked to about this case?

22

A Gretchen Hall.
Q Now, without going through this paragraph again, did you ever have a conversation --
A No.
Q -- the conversation that's referred to in this second paragraph of exhibit number 001030 with Gretchen Hall?
A No, I didn't.
Q Is there anyone else that you worked with at the FBI in this case?
A Let me think. No. Early on, I was directed to make all my contacts through David Reign.
Q Did you ever discuss the press reports with David Reign?
A I may have told him that I had been approached by news media, but nothing more than that. I don't believe I've ever discussed particulars of newspaper articles with anybody.
Q And did you and Reign or you and Hall ever discuss the manner in which Mr. Teckler was responding to the media?
A No.

MR. GICALE: All right. I have nothing further at this point.

MR. IVEY: I have no questions. I'd like to thank you for coming up for this.

(Whereupon, at 10:33 a.m., the deposition was concluded.)

CECILIA RYKER SEAY

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, PATRICIA A. ZUBER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Notary Public in and for the
District of Columbia

My Commission Expires FEBRUARY 14, 2000

DEPOSITION OF BRUCE R. LINDSEY
IN RE: S. RES. 120

TUESDAY, NOVEMBER 21, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of BRUCE R. LINDSEY, called for examination pursuant to notice of deposition, at 12:42 p.m. in Room 534 of the Dirksen Senate Office Building, before CARMEN BUNCH, a Notary Public within and for the District of Columbia, when were present:

ROBERT J. GIUFFRA, JR., ESQ.
Majority Chief Counsel
NEAL E. KRAVITZ, ESQ.
Minority Principal Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

WILLIAM D. NUSSBAUM, ESQ.
Hogan & Hartson
555 Thirteenth Street, NW
Washington, DC 20004
On behalf of the Deponent.

CONTENTS

WITNESS	EXAMINATION
Bruce R. Lindsey	
by Mr. Giuffra	3
by Mr. Kravitz	122

3

PROCEEDINGS

MR. GIUFFRA: Good afternoon, Mr. Lindsey. My name is Robert Giuffra, chief counsel of the Banking Committee, principal Democratic Deputy Special Counsel.

This is a deposition that is being conducted pursuant to Senate Resolution 120. As you know, Senate Resolution 120 establishes a Special Committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation and other related matters.

Mr. Lindsey, you've already heard the preliminaries that we've given before with regard to how we conduct depositions. Do you want me to go through that again?

MR. LINDSEY: No, that's fine.

MR. GIUFFRA: Why don't we just begin.

Whereupon,

BRUCE LINDSEY

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

4

BY MR. GIUFFRA:

Q Mr. Lindsey, would you just state your name for the record.

A Bruce Lindsey, L-i-n-d-s-e-y.

Q Mr. Lindsey, when was the last time you spoke to Jim Lyons?

A Four, five days ago.

Q We received some documents, one document this morning, which bears Bates number BL 4937. Have you seen this document before?

A My lawyer showed it to me yesterday and it's my handwriting, so I guess I saw it when it was prepared.

Q Do you know why it was not provided to the Committee until this morning?

A I do not.

Q If you could just -- do you have any recollection of when you might have prepared this document?

A No.

Q If you could just read across.

A "Betsey Wright, 202-638-2121. During that

5

period of time, 1980," and then a line, "fundraiser, a lot of money. Something BC set up with Jim McDougal." And "Whitewater-Web, given to Web," I think it says "box," "box and a half." Then it says "1-1/2 boxes."

Q Let me ask a question. Do you know what the reference "something BC set up with Jim McDougal" refers to?

A I think the fundraiser.

Q Do you know whether that fundraiser was something that then-Governor Clinton set up with Mr. McDougal?

A No.

Q And then the next notation "Whitewater-Web, given to Web 1-1/2 boxes," do you know what that refers to?

A I believe that was -- she was telling me that a box, box and a half of materials involving Whitewater was given to Web.

Q So it would be your best estimate this is probably Betsey Wright relaying information to you?

A Yes.

6

Q Now, below that -- off the record.

(Discussion off the record.)

BY MR. GIUFFRA:

Q Mr. Lindsey, about halfway down the page there is some writing which is rather difficult to read on the copy that we received from your counsel. If you could maybe make an effort at trying to read that for us.

A "Spoke with Bob Nash. He was with BC when he" I think "went to" -- I can't read the next word.

Q Could that be "trailer"?

A Could be.

Q "On 145th Street"?

A Again, I can't read that, but that would make sense.

Q Who is Bob Nash?

A Bob Nash is now the director of presidential personnel. During the Clinton administration, he was -- at one time he was an economic adviser to Clinton in the governor's office.

MR. NUSSBAUM: You mean the Clinton

7

administration of governor?
THE WITNESS: I apologize. In the Clinton gubernatorial administration, he was an economic adviser and later head of the Arkansas Development Finance Authority.
MR. KRAVITZ: I thought Bob maybe finally had broken you there, after seven interrogations.
(Laughter.)
MR. GIUFFRA: Just trying to get him to get his boss to sign that securities litigation bill.
(Laughter.)
BY MR. GIUFFRA:
Q Do you have any recollection as to when Mr. Nash became the head of ADFA?
A No.
Q Say in 1985, do you know what his position would have been?
A No.
Q So he was something in the governor's office and then became head of ADFA?
A Yes, at some point in there. He worked for the Rockefeller Foundation before that.

8

Q Now, the reference to "trailer on 145th Street," do you know what that would refer to?
A Probably. I mean, you know, I --
Q What do you believe the reference to "trailer on 145th Street" refers to, given the context in which these notes were prepared?
A An office that McDougal maintained in connection with one of his projects.
Q Do you know what the project would have been?
A No.
Q And when did Bob Nash become director of presidential personnel?
A Maybe a year ago.
Q What would have been his position in 1993?
A He worked for the Department of Agriculture. He was undersecretary for rural development.
Q Have you ever spoken to Bob Nash about whether he went with Bill Clinton to Jim McDougal's trailer on 145th Street?
A I think so.

9

Q What did Mr. Nash recount to you about going to Jim McDougal's trailer with Bill Clinton?
A I think he indicated to me that on a trip that he made with the governor to south Arkansas somewhere, that on the way back they stopped by McDougal's trailer and were there approximately 10 to 15 minutes.
Q Did he indicate to you approximately what year this stop might have occurred?
A I don't think he remembered.
Q What did he recall transpired during the time when Governor Clinton was at McDougal's trailer?
A I think that he visited with -- I think they visited with McDougal and that was it.
Q Did Mr. Nash indicate to you whether then-Governor Clinton was alone with Mr. McDougal or whether --
A No, I think he was with -- I think he was with the governor at the time.
Q Did Mr. Nash indicate to you whether anyone else was present during this meeting with Mr. McDougal?

10

A He indicated to me that David Hale was not present. I mean, I don't know if he indicated whether anyone else was present but he indicated David Hale was not present.
Q Did you ask him whether David Hale was present?
A This was in the context of the reporter telling me the David Hale story and maybe after the David Hale indictment and those stories being in the press.
Q And did you have some -- at least someone had indicated to you that perhaps there had been a meeting with David Hale, Governor Clinton and Jim McDougal in this trailer on 145th Street?
A Yeah, Jeff Gerth mentioned that to me.
Q And how did you come to ask whether Mr. Nash was present with Mr. Clinton in the trailer?
A I don't know whether I asked or whether he read it and called me to tell me.
Q Did President Clinton indicate to you that he had gone to the trailer with Mr. Nash?
A I don't believe so.

11

Q So in all likelihood, it would have been Mr. Nash after reading press accounts with regard to Mr. Hale coming to you?
A Again, I don't have any recollection as to, you know, whether he called me, whether I called him, how I spoke to him about it.
Q Have you ever asked President Clinton whether he ever visited Mr. McDougal's trailer on 145th Street?
A I don't even know the answer to that. I may have in the context of asking the President whether or not he ever met with David Hale, outlined the three locations that Jeff Gerth indicated to me David Hale did, but I don't specifically remember asking it like that. So I don't know whether I did or didn't.
Q Did the President indicate to you whether he had ever met with David Hale and Jim McDougal?
A Yes. He indicated he had not.
Q But did he ever indicate to you whether he had met with McDougal at the trailer?
A That I don't recall.

12

Q Do you know someone by the name of Bishop Jones? Does that name mean anything?
A Doesn't mean anything.
Q Bishop James?
A Bishop James is a bishop in the I believe the AME, African Methodist Episcopal Church.
Q In Little Rock?
A I think in South Carolina.
Q George Ivory?
A Yeah, that name is familiar. As I was looking at your note, not on my note, I was trying to remember how I know George Ivory. I can't remember how I know him. I don't believe I know him in relationship to Whitewater. I believe that note is probably unrelated to the rest of this.
Q Do you recall any other conversations you might have had with -- strike that.
Do you recall any other conversations you might have had with Mr. Nash about David Hale?
A No.
Q Or any other conversation you might have had with Mr. Nash about Jim McDougal?

13

A Yes.
Q And what do you recall about those conversations you had with Mr. Nash about Jim McDougal?
A There was a question at some point raised about whether or not ADFA rented a building from McDougal, and I think I asked Bob about that.
Q And what did Mr. Nash say to you about ADFA renting a building from McDougal?
A I think they did.
Q This was an office building that was rented from Madison?
A Could be Madison and not McDougal personally. I don't know.
Q And did he say anything more to you about McDougal renting this office building from -- strike that.
Did he say anything more about ADFA renting space in an office building from McDougal or a McDougal entity?
A No, I think he just confirmed at some point they did, ADFA did have an office in that area where

14

Madison is and that it was a Madison or McDougal related building.
Q Do you know the location of the building?
A No.
Q Do you have any understanding as to whether Mr. Nash made the decision to lease the space from McDougal entity?
A I do not know whether it was Bob's decision or we have something called State Building Services, whether they made the decision.
Q Do you have any understanding as to whether Governor Clinton had any role in the leasing of the space to Mr. McDougal?
A No.
Q Did you ask Mr. Nash whether Governor Clinton had any input in the decision to lease the office space to Mr. McDougal?
A I don't remember.
MR. KRAVITZ: Did you say lease the office space to Mr. McDougal?
MR. GIUFFRA: From.
MR. KRAVITZ: I thought you said to.

15

THE WITNESS: I don't remember -- if he did, I don't remember when he talked to me.
BY MR. GIUFFRA:
Q You have no recollection of asking him that question, though?
A No.
Q Did you ever ask President Clinton whether he had any role in renting office space from McDougal?
A No.
Q Let me show you another document. This is something we've looked at previously, but we got a better copy from the Independent Counsel. Let me get the Bates number. This is a note, dated September 20 of '93, 2:30 p.m., conversation with Jim Lyons.
MR. KRAVITZ: Do you mean Jim Blair?
MR. GIUFFRA: Jim Blair, excuse me. Do you have a Bates number on that?
MR. KRAVITZ: We're both looking at the copies that came from the Independent Counsel's office, and there's no Bates numbers. There are corresponding Bates numbers to --

16

MR. GIUFFRA: That's what I was looking for, and I couldn't find the corresponding Bates numbers.
BY MR. GIUFFRA:
Q Let me just show you, if you could just read this reference right here (indicating) which is midway down the page beginning with --
MR. KRAVITZ: Is this the two pages of his notes?
MR. GIUFFRA: Yes.
MR. KRAVITZ: Why don't you just say which page you're on? I'm on the first page.
THE WITNESS: "Hueur asked Brent Bumpers -- asked whether indictment -- against Hale not McDougal."
BY MR. GIUFFRA:
Q And I believe you testified at your prior deposition that this indicated to you that Mr. Heuer had asked Brent Bumpers some information about --
A No, I told you there were dashes. I think I indicated that there were dashes in here and that I couldn't -- since I don't have anything other than

17

this, I cannot run all that together and make that into a sentence.
Q So your testimony would be what with regard to what this means to you?
A I don't know.
Q Okay.
A I mean obviously I took it in a conversation I had with Jim Blair, but beyond that, I don't have any recollection of it.
Q But would it be a reasonable construction of your notes that this indicates that Hueur asked Brent Bumpers some information about the indictment of Hale and possibly McDougal?
MR. KRAVITZ: Objection to the form of the question. He's already testified he doesn't know what it means. I suppose he's asking you if it's okay for him to speculate in that way.
THE WITNESS: I mean again, it clearly says "Hueur asked Brent Bumpers" and then dash, "asked whether indictment," dash, "against Hale not McDougal." I don't have any recollection as to what the conversation was, what he said other than what's

18

reflected in this note.
BY MR. GIUFFRA:
Q Okay. But reading your notes, do you have any reason to believe that it does not mean that Brent Bumpers advised that the indictment would only be against Hale and not against McDougal?
MR. KRAVITZ: Say that again.
THE WITNESS: Yeah, I think there's -- in the process, it could simply be that we were talking about indictment and he said, you know, it's against Hale not McDougal, not that that came from Brent Bumpers, but that was simply, you know, that that was simply -- you know, we were talking about -- I mean there was speculation in the paper.
BY MR. GIUFFRA:
Q Where would Blair have received information about the status of the indictment of Hale?
A Well, he may have read it in the newspaper. David Hale, two or three days before he was indicted, held a press conference and announced that he expected to be indicted, so I don't know the answer. The answer is I don't know.

19

Q My next question, see where it says "Hueur asked"? This is in a lighter pencil mark --
MR. KRAVITZ: It is?
BY MR. GIUFFRA:
Q -- than the rest of the document, and I have been told actually from people who have looked at the originals that it appears to be somewhat lighter type, letter point pencil. Do you have any recollection of writing that in?
A Nope. It's my handwriting.
Q You wouldn't know whether you might have gone back and written this in later?
A No.
Q The "Hueur asked" part of this?
A No.
Q No recollection?
A No recollection at all.
Q The "Hueur asked Brent Bumpers" and then with a dash and then "some information," does that indicate to you that perhaps Mr. Heuer obtained some information from Brent Bumpers which is then reflected immediately after the dash following

20

Mr. Brent Bumpers' name?
A Again, I think the "Hueur asked Brent Bumpers" goes together. "Asked whether indictment," and again I don't know -- again, I don't know the answer. I don't know what that means, "against Hale not McDougal." Beyond what's reflected here, I don't have any idea.
Q When was the last time you spoke to Brent Bumpers?
A I don't know if -- I have no idea.
Q But he's someone you know?
A I do not remember a last time speaking to Brent Bumpers. You know, my guess is --
MR. NUSSBAUM: Don't guess.
THE WITNESS: -- not recently. I don't believe I've spoken to him in the last two years, maybe the last three years.
BY MR. GIUFFRA:
Q Do you have any recollection of speaking to him during 1993?
A No.
Q And it would be your testimony that -- have

21

you ever spoken to him about anything having to do with Whitewater --

A No.

Q -- or David Hale?

A No.

Q Do you have any understanding as to whether Mr. Heuer spoke to Mr. Bumpers --

A No.

Q -- about Whitewater or David Hale?

A No.

Q Do you have any understanding as to whether Mr. Blair spoke to Mr. Bumpers about Whitewater or David Hale?

A No.

Q What I'm going to do now is run through some documents that we received after your deposition from the White House. We have obtained some information with regard to where these documents came from. I'm going to run through the documents that were purportedly out of your files and just ask you to go through those documents.

There are some other documents we also

22

received from the White House that I want to ask you about. These are also documents we received on November 11.

The first document bears Bates number S 12362 to 63. If you could just take a look at that.

A Okay.

Q Are you familiar with this document?

A Uh-huh.

Q This is a memorandum to file from Bruce Lindsey dated October 12, 1993 and the re: is Whitewater Development Corporation. Now, Mr. Lindsey, if I could just direct your attention to midway down the first page, there are two -- you report on two assertions that you made to the Washington Post reporters that you met with on October 9.

The first assertion was "Bill Clinton never had a conversation with David Hale about making a loan to Susan McDougal."

What was the basis for that statement?

A I asked him.

Q You asked President Clinton?

23

A Yes.
Q And he told you that he never had a conversation with David Hale about making a loan to Susan McDougal?
A Correct.
Q Now, the next statement is "Bill Clinton was unaware until very recently that 881 acres of property in Pulaski County, Arkansas was purchased from International Paper in the fall of 1986 in the name of Whitewater Development Corporation."
What was the basis for that statement?
A Again, I asked him.
Q And President Clinton said that he had no knowledge of this acquisition?
A Right.
Q When did he indicate to you that he first learned of the acquisition of this property?
A I think when I asked him.
Q If I could just direct your attention to the second page of this document bearing Bates S 12363.
A Let me back up. I'm not sure by my asking

24

him he was aware of the acquisition. Jeff Gerth had told me in our conversation that 881 acres had been bought and I asked the President whether he knew anything about that, and he indicated no, so I mean the fact that Jeff Gerth tells me, I don't know if I knew as a fact at that time that in fact it had occurred.
Go ahead. I'm sorry.
Q Do you recall when you would have asked the President, sometime --
A When did I meet with Jeff Gerth, 20th or something?
Q September 20, I believe.
A Sometime between September 20 and October 9.
Q Did the President say anything else about the nature of his investment in Whitewater Development Corporation when you spoke to him sometime between September 20, 1993 and October 9, 1993?
A Again, I don't remember the conversation. My guess is that I walked in to him after I had met

25

with Jeff Gerth, indicated to him that David Hale was making certain allegations, asked him whether there's any truth to it, told him that David -- that Jeff Gerth had indicated that this International Paper property had been bought, did he know anything about that.

Again, whether the conversation was any more than that, I have no idea, but my guess is it probably wasn't because I think I was probably asking him about those specific questions.

Q Did you ask -- any time in 1993 and 1994, did you ask the President whether he had any knowledge of payments of bills by Whitewater Development Corporation in the 1980s?

A No, I don't believe I did.

Q Do you recall ever asking the President whether he was aware of the fact that a checking account was maintained at Whitewater Development Corporation -- strike that, whether -- strike that.

During 1993 or 1994, did you ask President Clinton whether he was aware that -- strike that.

During 1993 and 1994 --

26

MR. KRAVITZ: I think that's three strikes and you're out.

BY MR. GIUFFRA:

Q During 1993 and 1994, did you ask President Clinton whether he was aware of where Whitewater Development Corporation maintained a checking account?

A Again, I don't believe so. You know, I spoke to Jim Lyons on numerous occasions, was familiar in general with the Lyons report and what was reflected in that report. I don't believe I've ever had a discussion with Clinton that went over that same information, but I think, you know, the information you're indicating would be the information that was in basically the Lyons report.

Q So it would be your testimony that in '93 and '94 you never asked President Clinton questions about the management, for example, of Whitewater Development Corporation?

A Ever, I don't know the answer to that. I cannot answer that.

Q Did you ever discuss with President Clinton

27

during 1993 or 1994 the fact that Whitewater Development Corporation maintained a checking account at Madison Guaranty Savings & Loan Association?

A I don't believe so.

Q Is it possible you might have spoken to him about the fact that there was a Whitewater checking account at Madison?

MR. NUSSBAUM: Objection to request for possibilities. If he doesn't remember, then he doesn't remember. I suppose anything is possible, but I don't think that's a fair question.

THE WITNESS: I don't believe I've ever asked the President a specific question about where did Whitewater Development Corporation have accounts. I have seen Whitewater Development Company checks that reflect a bank on them. I can't tell you today whether the bank that's reflected on any of them is the Madison Bank or not, Madison Savings & Loan.

But I don't believe I ever had a conversation because I don't know why I would have had that conversation to ask him beyond what I had

28

seen in various checks.

BY MR. GIUFFRA:

Q Well, do you have any understanding as to whether -- strike that.

You're aware of an RTC criminal referral that bears the number 0004?

A No.

Q You're not aware of the existence of an RTC criminal referral bearing the number 0004?

A No, I have no idea how RTC refers to their criminal referrals.

Q Are you aware of an RTC criminal referral in which allegations are made that certain check-kiting activity was conducted at Madison Guaranty through, among other accounts, Whitewater Development Corporation?

A I have read newspaper articles. I have never seen -- I have read newspaper articles that claim that McDougal engaged in what the reporter referred to as a check-kiting scheme, so you know, I've never seen -- I don't think I've ever seen a criminal referral that reflects that. I don't know

29

for a fact other than what I read in the paper that there is a criminal referral that reflects that.

MR. NUSSBAUM: Are you confirming now that there is?

BY MR. GIUFFRA:

Q At page 12363 of your memo --

A The second page of that same memo?

Q Yes, dated October 12, '93, there are a series of questions. Do you have a recollection as to whether you attempted to ascertain the answers to those questions?

A I believe I did.

Q And let's just take the questions in order. The first question is whether David Hale or Whitewater came up during Jim Guy Tucker's visit with the President, I guess the October 6, 1993, and I believe you've previously testified with regard to that matter that you had asked questions of, I believe it was the person who attended the meeting with the President and also with --

A No, I asked the President and I asked the press secretary to Jim Guy Tucker.

30

Q And it's your understanding that David Hale or Whitewater did not come up?

A That is correct.

Q The second question that's listed, why don't I read it into the record. "Did Susan McDougal discuss with Hillary Clinton the possibility of letting the McDougals 'take' Whitewater off the Clintons' hands in late 1986 and if so, why didn't Mrs. Clinton agree to the arrangement?"

Did you ever attempt to ascertain the answer to that question?

A At some point I got an answer to that question. Again, I don't know if it was in direct response to this question or at some other point, but at some point, I was told the answer to that question.

Q And who told you the answer to that question?

A I don't remember.

Q Was it Mrs. Clinton?

A I don't think it was her directly, no.

Q Was it Ms. Williams?

31

A Might have been.
Q And she might have been reporting on a conversation she had with Mrs. Clinton?
A Well, it would have been Maggie Williams, could have been Lisa Caputo, I just don't know.
Q Or maybe Ms. Thomases?
A I don't think so.
Q But they were reporting back to you after they spoke to Mrs. Clinton?
A Again, I don't know if they got it from Mrs. Clinton or from whom, but --
Q You said indirectly. That would mean someone would have spoken to Mrs. Clinton at one point.
A Well, the Clintons publicly have said, and this is why -- that at some point, and I don't know if it was Susan McDougal, but the McDougals offered to take their Whitewater interests, and the Clintons indicated that they wanted to be released from the liability and there was no way to release them from the liability, or that the people who had the liability were not prepared to release them from the

32

liability, and therefore they declined to give up their interest if they were still going to be on the liability.

Now, again, whether Mrs. Clinton said that publicly in her press conference, whether or not that's been reported through her press office, I don't remember, but that is basically the answer to that question.

Q And what would be the liability that you would be referring to?
A The Madison loan originally for $180,000, that was less now, would have been less in the mid-'80s, but was still significant, some amount.
Q So it's your understanding --
A The Madison loan is not the right name because it's not at Madison. It's whatever the -- whatever the bank is where the original mortgage loan was.

MR. KRAVITZ: Is it the Bank of Kingston?
MR. GIUFFRA: Off the record.
(Discussion off the record.)
BY MR. GIUFFRA:

33

Q So it's your understanding that Ms. McDougal was willing to let the McDougals take Whitewater off the Clintons off hands but not -- strike that.

It's your understanding that the lender would not allow the Clintons to extinguish their liability by just transferring the liability and their ownership to the McDougals?

A My understanding was that the Clintons were told by somebody, I don't know who, that they would still be on the liabilities and that there was no way to -- that the parties to the liability were not prepared to release them.

Q Now, was it your normal practice during 1993 if you wanted to communicate with McDougal to do so through Blair and Hueur?

A No.

Q But Jim Blair was someone who communicated with Hueur on some sort of a regular basis?

A I don't know that.

Q But Mr. Blair on occasion reported to you on what Mr. Heuer had told him with regard to what

34

McDougal had told Hueur?

A I don't know that. I mean, in the meeting with Gerth, Blair came up and the matter came up. I probably called Jim Blair to find out what that related to. I don't know if -- I would not say that Jim Blair reported to me unless I called him and asked him a question.

Q Yeah, but you would have -- your practice would have been to call Jim Blair and have Jim Blair make an overture to Hueur in order to find out what was going on with regard to McDougal?

A No, I don't think I would say that.

Q What would be a fair statement?

A Again, I would ask Jim Blair what he knew. I don't think I would -- I don't believe I ever used Blair to go to Hueur to go to McDougal. I think if Jim Blair's name came up or if Jim Blair was -- later there's a reference to Jim Blair writing a letter to Hueur. I would call up Jim Blair and say, you know, did you write a letter to Hueur, what's this all about?

Again, it was part of my attempt to try to

35

understand what these reporters were asking and to whatever extent, be prepared to respond to it.

Q Do you know Hueur yourself?

A Yes. Not well, but I know him.

Q During 1993, do you recall speaking with Mr. Heuer?

A No.

Q During 1993, approximately how frequently would you have spoken with Mr. Blair?

A Less than half a dozen times, I would think.

Q The third question is "did Hillary Clinton know about the Susan McDougal loan from Capital Management Services or the land purchase from International Paper prior to David Hale's indictment?"

Did you obtain the answer to that question?

A I don't remember. I mean I don't remember whether I -- I don't know today. I don't think I could say as a fact today whether I knew -- whether she did or didn't, so I don't think I ever got the answer to that.

36

Q The memorandum of October 12 is cc'd to Maggie Williams and Bill Kennedy. Why would you have cc'd Maggie Williams and Bill Kennedy?

A Well, I think because a lot of the questions related to Mrs. Clinton, I would have cc'd Maggie Williams. I believe I cc'd Bill Kennedy because the entire issue in the first meeting with Gerth, Gerth raised with me the Bill Kennedy/Randy Coleman conversation.

I at some point spoke to Bill Kennedy after that about that, and I think because of that, since this related to the same subject matter, David Hale, I thought Kennedy would want to know about the meeting I had. Mark Gearan set up the meeting, I think.

Q Well, he was the press person.

A Right.

MR. KRAVITZ: When you say he set up the meeting, you mean the meeting with Gerth or this meeting?

THE WITNESS: Set up this meeting.

BY MR. GIUFFRA:

Q The Washington Post meeting?
A Yes. But was not present.
Q This document bears Bates number S 12364. I just want you to read the reference midway through the page, where it says "McDougal net, Clinton gross $30,000," and then there's another word after that?
MR. KRAVITZ: Would you have him say what this document is before he reads from it?
THE WITNESS: Well, if you look at this in relationship to that (indicating), this reflects the three questions that were asked.
MR. KRAVITZ: By the Post reporters?
THE WITNESS: By the Post reporters, yes. I don't know what that word is.
BY MR. GIUFFRA:
Q Do you have any understanding as to what this reference to "McDougal net, Clinton gross $30,000" would be to?
A No. My -- no. I believe it was probably the Post reporters telling me how they viewed the Lyons report numbers. Again, you know, this is in the middle of them asking the questions, and I think

in between they were telling me, you know, how they saw the world.
Q They were having problems with regard to the Lyons numbers?
A They have always indicated that they -- their numbers and the Lyons numbers didn't match up.
Q And how did they indicate to you that the Lyons numbers and their numbers did not match up?
A They claimed they had someone look at the Lyons report and that their person who looked at the Lyons report couldn't get to where the Lyons report got to.
Q Do you recall anything more specifically about the -- why their person could not get to the same result as the Lyons report did?
A No, no. I mean we had lots of discussions with The Washington Post about wanting to have the underlying documents, wanting to do their own analysis -- about 90 percent of it I thought was probably made up -- so that we would give them everything so that they could go out and do their own study.

39

Q Let me show you a document that bears Bates number S 12365, memo to Bruce Lindsey from Skip Rutherford, December 21, 1993 re: Whitewater Development.

Have you seen this memorandum before?

A I'm sure I have, yes. Well, I've seen it recently, yes. I assume I saw it around the time it was prepared.

Q Who is Skip Rutherford?

A Skip Rutherford is with an advertising public relations firm in Little Rock.

Q And is he someone who is a friend of yours?

A Oh, yes, has been for years.

Q Who is the Bradbury referred to in this memorandum?

A Curt Bradbury was president of Worthen Bank and Trust Company. I say president, he may be CEO but the head person, maybe president/CEO.

Q And in 1993 was Mr. Rutherford still in Little Rock?

A Yes.

Q Do you recall anything more about the

40

circumstances under which you received this memorandum other than the document itself?

A No.

Q Now, there was a discussion in this memorandum of the $250,000 loan that was made to McDougal by Worthen Bank in '92 and then expanded in --

A In '92 or '82?

Q '82, excuse me, was expanded in '83. Then it talks about how the loan was written off in '87 for $100,000. Do you know anything more about this particular loan?

A No.

Q There's a discussion here of the Wall Street Journal writing an article or editorial about this transaction. Do you know anything more about that?

A No.

Q There's a discussion here about President Clinton pursuing a "revamping of the Fed" in "curtailing of the Fed's powers," because the Fed has been picking on Clinton's friends at Worthen. Do

41

you know anything about this?
A No.
Q Do you know whether Mr. Rutherford ever discussed this matter with Mr. McLarty?
A No.
Q I'll show you a document that bears Bates number 12366 to 12371. This is a memorandum from Neil Eggleston to Harold Ickes re: Whitewater-RTC and FDIC Rose Law Firm issues. Do you recall receiving this memorandum?
A No.
Q Have you seen this memorandum before?
A Yes.
Q Did you ask Mr. Eggleston to prepare this memorandum?
A No.
Q Do you know who asked Mr. Eggleston to prepare this memorandum?
A No.
Q Do you recall examining the FDIC and RTC reports that were released in February 1994 with regard to the Rose Law Firm?

42

A Yeah, I thumbed through them.
Q Did you discuss those reports with Web Hubbell?
A No.
Q Did you discuss those reports with Mrs. Clinton?
A Mrs. Clinton?
Q Yes.
A I don't think so.
Q Did you discuss those reports with Mr. Kennedy?
A No, I don't think so, unless he was in a meeting. No, I don't think so, I don't think he was in any of those meetings.
Q During 1993 and 1994, did you discuss with Mr. Hubbell whether Rose had a conflict of interest with regard to its representation of Madison Guaranty and the RTC?
A No.
Q Did you discuss this possible conflict of interest with Mrs. Clinton?
A No.

43

Q With Mr. Kennedy?
A I can't recall.
Q Show you a document and I can't tell what -- this may be a three-page document. 12372, 12373, 12374. Am I correct that's a three-page document?
A I don't know.
Q Are these your --
A No, it's not a three-page document.
Q Separate?
A They have different names at the top so I -- rarely was Jeff Gerth and Mike Isakof in the same meeting.
Q You weren't doing press conferences?
If you could just go through the first note bearing Bates number 12372.
A Okay. "Jeff Gerth, Steve Engelberg, New York Times. David Hale, Small Business Investment Corporation, Capital Service Management. BC urged DH to make improper loans, Whitewater. Jim and Susan McDougal, Jim Guy Tucker.
"Three meetings 1986. Tunnel at Capitol,

44

political event, mall somewhat exculpatory. Magistrate subpoena, 1:20 p.m., July 20, 1993. Tax records, corporate records, affidavit from David Hale as early as today."
Q Do you recall when these notes might have been prepared?
A No. I could speculate that it was prior to my meeting with Jeff Gerth and Steve Engelberg. I'm not sure Steve Engelberg was at the meeting but prior to my meeting with Jeff Gerth.
Q Prior to the meeting on September 20, 1993?
A Yes. 1993.
Q Why do you believe these would have been prepared prior to your meeting on the 20th?
A Because it covers the same subject that they discussed at that meeting but nowhere near the detail that the notes did. My guess is that's what they told me on the phone and then suggested that we sit down and talk about it or meet about it.
Q Do you recall when Mr. Gerth might have spoken to you on the phone?
A No.

45

Q Would it have been a week before or two weeks?
A I have no -- I assume it was after he had been to Little Rock, so you know, but I don't know when that was so I don't -- I do not believe, again I would almost have to look at my notes, that there's that big of a gap between when he said he spent three days in Little Rock and when we met. In fact, it may have been Monday, Tuesday and Wednesday or something -- well, I don't remember. I'd have to look at the notes.
Q It was sometime in September 1993 that these notes would have been prepared?
A Yes, I would think, a day or two before the 20th, but I --
Q So sometime in the middle of 1993, probably sometime between the 15th and the 18th?
A I don't know that.
MR. NUSSBAUM: Of September?
BY MR. GIUFFRA:
Q Of September 1993.
MR. NUSSBAUM: If you know.

46

THE WITNESS: I don't know. You're telling me that I met with Gerth on the 20th?
MR. KRAVITZ: Your notes indicate that.
THE WITNESS: Okay.
MR. KRAVITZ: Just so the record is clear, I think, Mr. Lindsey, you said you don't know when you had this phone conversation with Gerth and Engelberg, but you think it was within a few days before you actually met with them on September 20?
THE WITNESS: That's correct. Let me take a break.
(Recess.)
BY MR. GIUFFRA:
Q Mr. Lindsey, at the middle of this page, 12372, it refers to a tunnel at the capitol. What does that indicate to you?
A Well, I can tell you what Jeff Gerth told me David Hale told him.
Q What did Jeff Gerth tell you that David Hale told him?
A Which was that at one time -- well, you have to know the state capitol, but it's sort of like

47

the U.S. Capitol in that there are steps going up and underneath there there is a short tunnel that's not very long but -- so that you can go under and let somebody out, similar to the way the U.S. Capitol is, and that he, Jeff Gerth told me David Hale told him that he saw Clinton coming out of or going into the tunnel one time and the President -- governor asked about are you going to be able to help my friend, Jim, something to that effect.

Q And the political event, what does that refer to?

A I don't think it refers to anything because that's different than the version that he told me in our meeting, so, you know, again I -- there was not a political event in the meeting.

Q In the meeting, what did he refer to?

A I think the second one was the 145th Street trailer. This is where Clinton jogged down in his jogging clothes to 145th Street.

Q And this is also the story -- this is also the claim that there was a leather chair in the 145th Street trailer --

48

A No, that's a different -- that was when the President asked -- or the governor asked to give the business to the Rose Law Firm.

Q Then it says "mall somewhat exculpatory." Do you know what that refers to?

A Well, I can tell you again in the longer meeting, he said that they met in the mall, the President, then governor made some reference to do you know what Susan McDougal did, and David Hale supposedly said what are you talking about, and Bill Clinton said you ought to ask Jim. Again --

MR. NUSSBAUM: This is Gerth reporting what Hale reported on what Clinton was alleged to have said?

THE WITNESS: You have 11 or 12 pages of notes that reflect what I actually remember him saying.

BY MR. GIUFFRA:

Q This is what use Susan McDougal made of the money, the $300,000?

A I think that's what that was reference to, yes.

49

MR. KRAVITZ: Can I interject? Are you now testifying about what Mr. Gerth told you on September 20 in person or about what Mr. Gerth told you in this telephone conversation?

THE WITNESS: No, no, no, again --

MR. KRAVITZ: I think this is all in reference to this one page of notes, which is S 12372, but that may not be what you're testifying about.

THE WITNESS: No, that's right. Bob asked me what I knew or what I thought that referred to, and in order to respond to that, I have to refer to the September 20 meeting because that's when my notes reflect I learned much more. Again, I don't remember anything about either the September 20 meeting or this telephone call other than what's reflected in the notes, so I thought I was simply just repeating back to him what my notes reflect from the September 20 meeting.

BY MR. GIUFFRA:

Q During 1993-1994 did you have any discussions with anyone about the $2000 a month

50

retainer between the Rose Law Firm and Madison?

A Yes.

Q Who do you recall discussing that retainer with?

A I don't remember.

Q Did you ever ask Mrs. Clinton about that retainer?

A I don't think specifically.

Q Generally?

A Well, no, I don't remember asking Mrs. Clinton. At some point I learned -- "retainer" is not actually the right word because it wasn't a retainer, it was an advance against billings, and I learned that they had returned at the end of the period the amount of money in excess as to what they had actually billed.

Now again, I don't -- I can't tell you today who I learned all of that from, but in the course of all of this, I learned that, you know, there was a period of time where they received a $2000 a month advance against billings and when they ended their representation, they returned the excess.

51

Q For the entire amount that had been paid?
A My understanding was the excess of the entire amount over their billings.
Q Did you ever discuss with Mrs. Clinton how the Rose Law Firm was retained by Madison?
A No.
Q Did you ever discuss with President Clinton whether he had asked McDougal to retain the Rose Law Firm?
A I have some vague memory that I asked him one time about the jogging over and the leather chair story, and he said that it didn't occur.
Q So he told you --
A I think that's right.
Q So he told you he had nothing to do with Madison retaining Rose?
A I don't know I can say -- I think I asked him will he -- I think it was a joking reference to his -- that McDougal was making a big deal about sitting in his new leather chair and having been jogging and being sweaty.
Q When did you first learn that a subpoena

52

had been authorized with regard to certain premises of Mr. Hale?
A I think from Jeff Gerth.
Q Next document, 12373, 12374.
A Okay.
Q If you could just read across the top on that.
A "Mike Isakof, Chuck Babcock, S. Schmidt.
Q Washington Post reporters?
A Yes. "1991 tax return. McDougal-meeting with Hale did not occur. Funds used to purchase IP property. What did we base the reconstruction on?"
Q Let me ask a question. The reference to "McDougal," dash, is that McDougal told you or you advised him?
A No, this is a conversation I had with them. This was the meeting that's reflected I believe in the two-page typed memo that you showed me dated October 11 or 12.
Q October 9.
A Well, the meeting was October 9 and the date on the memo I think is the 12th.

53

Q That's correct.
A Okay. I think they -- I think I told them that the meeting with Hale did not occur. Again I don't think -- I think this was not that I talked to McDougal but that I was simply answering their questions. I may have written down McDougal because they were telling me that --
Q That was based on your conversation with the President?
A Right. And I guess "funds used to purchase IP property" was a short way of maybe my answer to their question that the Clintons did not know that funds -- that money was used to purchase land in the name of Whitewater.
"What did we base the reconstruction on" and then it says "records that HRC had. Had some corporate records, ledgers, some work papers, some escrow contracts." That's the Lyons report.
Q The next entry?
A "Other than loans," then there's "$30,000." Then there's something and it says "fiscal year 1981."

54

Q Do you know what that refers to?
A No. Then there's "$22,860 something," maybe $8,800. "Madison Bank $30,000. Security Bank of Paragould," I can't read what's written across.
Q Do you know what that reference refers to?
A No. All of this -- again, The Washington Post never was comfortable with the Lyons report and the conclusions of the Lyons report or the analysis of the Lyons report, and all of this was some way of their, I think, trying to tell me why the Lyons report was not an accurate reflection or they didn't understand the Lyons report to be an accurate reflection, and these were just, you know, again my writing down snippets of their basically making an argument that they should be entitled to see all of the documents that made up the Lyons report so that they could do their own analysis of it.
So again, this was their way of trying to convince me, I think, that the Lyons report didn't hold together and that therefore we should make a more complete disclosure.
Then the last one is "income tax benefits,

55

Madison Marketing." Again I don't know what that refers to.

Q The next page?

A "1989, '90, '91 tax returns, 18,000 land sales, Exhibit A, page 2." Again, I think they were comparing the tax returns to the -- I think Exhibit A, page 2 of the Lyons report and it was just part of their argument why they didn't jibe.

Q Do you have any understanding as to whether Hale's allegations against Clinton, if true, would constitute a crime?

MR. NUSSBAUM: Objection. Why would -- how is that a fact-gathering exercise for you to ask him now for his legal analysis?

MR. GIUFFRA: Well, if someone had advised him that it was a crime, then actions that were taken from the point he was advised that it might constitute a crime would reflect that. If he was advised by someone that it was not a crime, then his actions might be colored by that.

MR. NUSSBAUM: Do you have any understanding?

56

MR. KRAVITZ: Your question isn't pinpointed in time. Your question is now. He hasn't taken any actions after now.

BY MR. GIUFFRA:

Q During 1993-1994, did you have any understanding as to whether Hale's allegations against Governor Clinton, if true, would constitute a crime?

MR. NUSSBAUM: Any specific allegation?

BY MR. GIUFFRA:

Q The allegation with regard to -- strike that. I'll restate the question.

During 1993-1994, did you have any understanding as to whether Hale's allegation that then Governor Clinton had pressured Hale to make a loan to Susan McDougal, if true, would constitute a crime?

A I don't know how to answer that.

MR. NUSSBAUM: Do you remember whether in 1993-1994 you had any -- we're talking -- we're not talking about what if anything do you think now or believe now or know now, but what if anything you

57

thought then. If you know. If you can't separate what you know now from what you knew then, tell him that.

THE WITNESS: I think my initial reaction was encouraging someone to make a loan would not constitute a crime. That was sort of my initial reaction. Now, I can reflect on it and perhaps depending upon what you knew and what the funds were used for, I don't know enough about the SBA law to know whether or not -- you know, I'm not today sure whether or not -- what the criteria were for making the loans with Small Business Investment Corporation and whether Susan McDougal would or would not have qualified, and I don't know whether it's a crime today to make a loan to someone who doesn't qualify.

So the answer to all of that is I'm not sure that the Susan McDougal loan is illegal, and I'm not sure -- I would think even less that suggesting or encouraging someone to make a loan would be less of a crime or not a crime.

BY MR. GIUFFRA:

Q Did you conduct any research in 1993 to

58

ascertain whether Hale's allegation that Clinton had pressured him to make a loan to Susan McDougal might constitute a crime?

A No.

MR. NUSSBAUM: The allegation or if true?

BY MR. GIUFFRA:

Q If true.

A No.

Q Are you aware as to whether anybody at the White House did any research into that question --

A No.

Q -- during 1993?

A No.

Q Do you recall any discussions you might have had with anyone at the White House during 1993 about whether Hale's allegations against Clinton if true would constitute a crime?

A No.

Q Never discussed it with Bernie Nussbaum, for example?

A Don't recall it.

Q Neil Eggleston?

59

A No.
Q Cliff Sloan?
A Don't recall.
Q No understanding as to whether anyone at the counsel's office might have done research into that question?
A No.
Q Let me show you another document bearing Bates number 12375.
MR. KRAVITZ: I think there's two more pages that go with that.
THE WITNESS: There are.
BY MR. GIUFFRA:
Q 76 and 77?
A Yeah, I believe those are the two pages that are behind this one.
Q Is this a fax that you received from Tyson Foods?
A Yes.
Q And it was from Archie Schaffer?
A Yes.
Q Beverly Bassett Schaffer's husband?

60

A Yes.
Q He's a friend of yours?
A Yes.
Q And she's a friend of yours?
A Yes.
Q The handwriting on the lower right-hand side of the page bearing 12375, is that your handwriting?
A Yes.
Q If you could just read across.
A "HRC, counsel to the Clintons, libel suit, absolutely true. Letter, not sure. Will check."
Q What does that refer to?
A Jeff Gerth called me at some point and indicated that he had spoken with McDougal, so this is Jeff Gerth saying that he had spoken with McDougal and that McDougal believed or felt or thought that Jim Blair had pressured him at some point after the initial Gerth story.
Q This was in 1992?
A The initial Gerth story was in 1992. And that Blair had written McDougal's lawyer a letter. I

61

think that's all I knew. I think you may have a note that reflects that conversation.
Q Have you seen that letter that Mr. Blair wrote to Mr. Heuer?
A Yes, it's -- no. Oh, yeah, I've seen it at some point.
Q Did you participate in the preparation of that letter?
A No. And so I think I called Jim Blair, who I believe was in London on business, and asked him about this. And these, I believe, reflect what he told me.
Q And this is what Blair told you that the reporters had said to Blair?
A I don't know -- no, again, I don't know. I believe this is what -- in talking about what Jeff Gerth had said, this is what I wrote down that Jim Blair said to me.
Q Why don't you read the next entry.
A "Letter not sure. Will check. Explain to Sam a trial acquittal. Explain to Sam -- trial acquittal. Why would he by talking to the press get

62

himself reindicted. Not in his interest."
MR. NUSSBAUM: The dash by the way is not Sam dash. Sam, and a dash.
THE WITNESS: That's right.
BY MR. GIUFFRA:
Q The notation "explain to Sam," that's Sam Hueur; correct?
A Right.
Q And this is an instruction that you were giving to Mr. Blair?
A No?
A No, I would think that Jim Blair was telling me that at some point after the initial story ran that he had a conversation with Sam Hueur in which he explained to Hueur that McDougal had gone through a trial and acquittal and why would McDougal by talking to the press want to reopen this whole issue.
Q And that Blair told Hueur it was not in McDougal's interest to talk to the press?
A Again that's what -- whatever the note says is what I remember, I mean what I know. I don't

63

remember it at all. But again, I think most of that is reflected in the letter which I assume you have that I have seen, but I don't --

Q This was a letter written in 1992?

A That's correct.

Q Do you know whether -- okay. This is just a recounting of what occurred in 1992?

A Right. That is after Jeff Gerth raised these questions both with Blair and with me. I tried to get hold of Blair to find out what it was all about. Blair had Archie Schaffer fax me a copy -- again, he was not in Fayetteville, so he had Archie Schaffer fax me a copy of the letter he got from Blair.

Q From Gerth?

A From Gerth, excuse me, gotten from Gerth and Steve Engelberg, and then, you know, told me what basically had happened.

Q Were these same questions that are set forth in this letter dated January 7, 1994 put to you?

MR. KRAVITZ: You're referring to S 12376

64

and 77?

MR. GIUFFRA: Correct.

THE WITNESS: There is a note dated BL 4431 that's produced to you all. Do you see that? I'm sorry, you may not have it as that Bates number.

MR. KRAVITZ: What number did you say?

THE WITNESS: I read the Independent Counsel number.

BY MR. GIUFFRA:

Q Maybe we should just ask a question. Is this a document that's in Mr. Lindsey's personal custody and control?

MR. NUSSBAUM: This is a document that was given to the White House to decide whether or not to produce, but I don't know exactly what they produced to you.

MR. KRAVITZ: Their cover letter of November 11 does indicate that one document was withheld on privilege grounds and it's indicated in a privileged log. I suppose that could be it.

THE WITNESS: This doesn't look like it would be a privileged document.

65

MR. KRAVITZ: We do have documents that have pieces of paper that look like that. If we find some of them, we can see if they match.

BY MR. GIUFFRA:

Q My concern is that, for example, yesterday we identified the document at the Independent Counsel that we had not received that was responsive and that there may be other documents that we haven't received that maybe --

A No, the counsel's office had this and sent it back to us.

Q So this was a document that was a White House record that you got a copy of?

A Just recently.

MR. NUSSBAUM: This was given to them to determine whether to assert a privilege. I assume they produced it to you. I don't know whether they produced it to you. You seem to be saying you don't have it. If that's the case, I think you need to take it up with them. I don't know what their thinking would be. I don't see anything on it that would differentiate it from things that they have

66

produced, but --

MR. KRAVITZ: Do you know when you produced it, when you gave it to the White House counsel's office?

THE WITNESS: No.

MR. KRAVITZ: Was it along with some of --

MR. NUSSBAUM: Off the record for a minute.

MR. GIUFFRA: Yes.

(Discussion off the record.)

BY MR. GIUFFRA:

Q We now have this document which bears Bates numbers 4431, 4433. I wonder, is there a page 4432?

MR. NUSSBAUM: Don't know.

BY MR. GIUFFRA:

Q Maybe we just check -- we ought to just check to see whether there is.

Mr. Lindsey, you were about to refer to this document?

A This reflects a telephone call from Jeff Gerth to me where he tells me that "Steve Engelberg was writing. Jim Blair. McDougal understood in March 1992 from conversation with Jim Blair, Blair

67

represented the Clintons. March 16, 1992 letter from Blair to McDougal (Hueur). 1, statute of limitations not having run. 2, release of WDC records without consulting Clintons."

And then next page, 4433, says "Jeff Gerth, continued. Talked with BC but mostly dealt with Blair. Lyons report, McDougal never consulted or talked to with respect to Lyons report. Lion's," spelled differently, l-i-o-n-'-s, "share. Susan Thomases, balance sheet 1982. Capital gains exclude."

Q Do you know what those last two references refer to?

A No.

Q The Susan Thomases reference?

A No.

Q The capital gains reference?

A No.

Q Was it your understanding that during the campaign Mr. Blair had spoken to McDougal?

A I don't believe it was my understanding until after this conversation.

68

Q Have you ever spoken with Mr. Blair about the fact -- whether he spoke to Mr. McDougal during the campaign?

A No.

Q What did Mr. Blair indicate to you?

A Go back to the last document, which I think represents my conversation with Jim Blair.

MR. NUSSBAUM: Let him hand it to you.

THE WITNESS: He said that he -- well, again "HRC counsel to the Clintons, libel suit, absolutely true. Letter, not sure, will check, explain to Sam, trial, acquittal, why would he by talking to the press get himself reindicted. Not in his interest."

BY MR. GIUFFRA:

Q Did you have any understanding from Mr. Blair whether he spoke to McDougal directly?

A No.

Q Did you ever ask him whether he spoke to Mr. McDougal directly?

A I don't know. I don't recall.

Q Did you ever discuss with Mr. Blair the

69

payment of Mr. McDougal's legal fees?
A No.
Q Do you have any understanding as to how Mr. McDougal's legal fees were being paid?
A I have some understanding, I thought from the press or from Sam Hueur withdrawing, that he wasn't being paid. I also know that they formed a legal defense fund that Mrs. Riley -- again, all of this was in the press -- was head of, I believe, but I don't know whether it raised any money either.
Q Do you know when that legal defense fund was set up?
A 1995, maybe. You could read the Democrat Gazette. Do you all take that?
MR. GIUFFRA: Off the record.
(Discussion off the record.)
BY MR. GIUFFRA:
Q Next one, 12378. Is that your handwriting?
A Yes.
Q And do you have any recollection of drafting or preparing this note?
A No.

70

Q Why don't you just -- let me just look at it. Do you have any recollection as to what this note refers to?
A I think it refers to the same subject as the questions from Jeff Gerth and Steve Engelberg.
Q Meaning whether there was a meeting between Blair and McDougal?
A Can I see it? Whether there was a meeting or letter. I don't know whether --
Q Why don't you read that note into the record.
A "Conversation/meeting with Jim Blair and Jim McDougal. Blair discussed McDougal suing The New York Times for liable. R.D. Randolph. BC, Blair, discussion with Jim McDougal. RD had a conversation with BC as well as Blair. Expressed misgivings that Clinton et al. had with McDougal having talked. Blair one of Clinton's henchmen. How are you going to get this done? Straighten this up," perhaps. I'm having some trouble. "You ain't got a need to know, and I ain't going to talk about it."
MR. NUSSBAUM: How Arkansas.

71

THE WITNESS: Let me see the letter, please, from Gerth to --
MR. NUSSBAUM: He'll show it to you. What do you want to see?
(Witness reviewed the document.)
BY MR. GIUFFRA:
Q Mr. Lindsey, on the record I would like to make a request, if you could just check with the White House to see whether there are any other responsive documents that perhaps we haven't received.
MR. NUSSBAUM: Well, wait a minute. We've produced everything responsive that we have. We provided things to the White --
MR. GIUFFRA: There was the document yesterday at the Independent Counsel we hadn't gotten a copy of.
MR. NUSSBAUM: And it is quite possible, although I'm never going to know, that there may be another document somewhere in the United States that if we only found, we would have produced. We have produced every document we're aware of that is

72

responsive.
We have provided to the White House counsel's office certain documents that they wanted to deal with on privilege issues and they have made an independent production to you. It's not our job to see to it that the White House counsel's does what it does. You haven't been shy about dealing with them, and I think you should deal with them directly.
MR. GIUFFRA: I just want to restate, if you have documents -- if Mr. Lindsey has documents in his possession, custody or control that are responsive --
MR. NUSSBAUM: We don't.
MR. GIUFFRA: Just to check to see that he has turned them over.
MR. NUSSBAUM: We don't. We take our responsibilities to comply seriously and have done our level best to comply. We don't, are not aware of any other documents.
MR. NUSSBAUM: What is the pending question?

73

MR. KRAVITZ: I don't think there is one.
BY MR. GIUFFRA:
Q Mr. Lindsey, do you believe that the document that your counsel provided us, 4431, 4433, that perhaps this handwritten note, 44 -- that bears the Bates number 12378 is the back of 4431?
A I was trying to figure that out.
Q Is that possible?
A Well, the pen looks slightly different but it is possible.
Q So you're not sure. The information that's recounted on 12378, is that based on a conversation you had with Blair?
A Again --
MR. NUSSBAUM: Which one is 12378?
THE WITNESS: If it's the back of the other one, then it's a conversation I had with Jeff Gerth. I can't tell who that is a conversation with. It sounds more like the Jeff Gerth questions than it does -- because there's a reference in the Jeff Gerth letter to Blair.
"During the campaign, R.D. Randolph, a

74

Little Rock associate of Mr. McDougal, went to see him to express misgivings, Mr. Clinton's misgivings, about his having talked to a reporter. Mr. Randolph had said that you were one of the people he reported to in connection with his visit. Mr. Randolph has also said he took care of the McDougal problem in his own quiet way."
That sounds like an amplification which I would expect to have come from Gerth of what's in the Gerth letter to Blair, but again I can't tell that and I don't have any independent recollection.
Q Do you know R.D. Randolph?
A Yes.
Q Who is R.D. Randolph?
A R.D. Randolph is a Arkansas businessman.
Q Do you know what the nature of his business is?
A Well, I know he is -- I think I know this, he is a partner or associate or somehow in business with Jim Guy Tucker in connection with Castle Water & Sewer. I knew R.D. when he worked for Bill Fulbright in the late '60s-early '70s.

75

Q Now, do you know whether Mr. Randolph spoke with Mr. McDougal?
A No.
Q At any time during 1992?
A No.
Q Did you ever speak to Mr. Randolph during 1993 about whether he had had any discussions relating to Mr. McDougal during '92?
A No.
Q Do you know what this reference to "RD had a conversation with BC as well as Blair, expressed misgivings that Clinton et al." -- you can --
A "Expressed misgivings that Clinton et al. had with McDougal having talked."
Q "Having talked --"
A Again, between that note and this letter are the only thing I know about that.
Q So you have no personal knowledge of any conversation that Randolph and Clinton and Blair might have had about McDougal --
A No.
Q -- at any time?

76

A I'm not sure that was a three-way conversation, that was a reference to a three-way conversation, but no.
Q 12379, those are just some notes you prepared?
A Yes.
Q Conversations with reporters, appears to be?
A At least one is, yes.
Q Which one would be the reporter?
A This one (indicating).
Q ABC?
A Yes.
Q What's the reference to Steve Smith?
A It says Steve Smith has telephone numbers, interviewed Cecilia Seay, SBA Fayetteville, Arkansas." Fayetteville attorney?
Q Attorney.
A Attorney, yes.
Q Who is Steve Smith?
A Steve Smith is a professor of political science at the University of Arkansas.

77

Q And he was formerly -- did he hold a position in the Clinton gubernatorial administration?
A First term, yes.
Q What was the position that he held?
A I don't know. He was -- I don't know. Executive assistant maybe.
Q These numbers, 575-5954, the office number and 575-0852, the home number, are those in Arkansas as far as you know?
A I don't have any idea. I assume they are.
Q Do you recall speaking with Mr. Smith during 1993?
A I don't recall.
Q Do you recall the last time you might have spoken to Steve Smith?
A Yes.
Q When was that?
A I think it was when we were in England, I guess, the summer of '94.
Q What do you recall about that conversation with Steve Smith?
A Steve Smith was in England teaching a

78

summer program or maybe there with students from the University of Arkansas for a summer program, and when the President went to Oxford, their summer program was at Oxford, he and I think the students he was with came to the event.
Q Have you ever discussed anything having to do with Madison, Whitewater or David Hale with Steve Smith?
A If this note didn't exist, I would say no, but I don't recall this, so I don't know whether this reflects or not, but I don't recall speaking to Steve Smith. I don't know whether someone else told me this information, but I don't remember speaking to Steve Smith about it.
Q And is it the reference to SBA and Cecilia Seay that leads you to believe that you might have spoken to him about David Hale?
A Well, I just recently read that Cecilia Seay was the receiver appointed by the SBA to wind down or to -- I don't know what the right word is, I guess take over Capital Management. Beyond having read that, this -- I would not have known who Cecilia

79

say was.
Q So you think this perhaps indicates Mr. Smith had been interviewed by Ms. Seay?
MR. NUSSBAUM: He said he just -- objection, objection. I mean, he says he doesn't recall speaking with Mr. Smith. He has Mr. Smith's name on a card with two phone numbers that he may have gotten from someone else, may have never spoken with Mr. Smith.
I would caution the witness not to speculate and caution the questioner not to invite him to speculate.
If you remember talking to him, tell him what you remember. If you don't, tell him that.
BY MR. GIUFFRA:
Q Now, the card to the right, ABC card, the reference to Chris Wade, do you know what that refers to?
A I know who Chris Wade is.
Q Who is Chris Wade?
A Chris Wade was a real estate person who handled some of the Whitewater sales.

80

Q Do you have any understanding as to whether anyone at the White House spoke to Mr. Smith during '93 or '94 about anything having to do with David Hale?
A I don't know.
Q When you spoke to Mr. Smith in London in, I believe you said it was '94?
A I believe so.
Q Summer of '94, did he mention David Hale to you?
A No, not that I recall. I don't believe so.
Q The second name that's indicated on the card, right-hand side of 12379, is what?
A Key ton Tren, it looks like. Trit? I don't know. I can't read the last name.
Q And then "key ton Trent's brother lost $100,000"?
A Kern Trent. "Kern Treat's brother lost $100,000." I don't have any idea what that refers to.
Q You don't know what that means?
A No.

81

Q Do you know who this Mr. Trent is?
A No.
Q And then real estate appraiseer?
A Again, I can speculate.
Q Let me show you another document. This bears Bates number 12386. Do you know what this document is?
A Part of this document is my handwriting, but beyond that, I don't know what it is.
Q Is this some part of someone else's handwriting?
A This does not appear to be my handwriting (indicating).
Q That would be the diagram in the middle of the page?
A Correct.
Q Do you know whose handwriting that might be?
A No.
Q Do you know when this document might have been prepared?
A No.

82

Q Do you know the circumstances under which this document might have been prepared?
A No. Well, I --
Q Do you have any possible understanding as to why this document might have been prepared?
A No, but I have a possible time frame, because it's on the back, I believe, of some -- some of this (indicating).
Q You mean on the back of an ABC news document dated 1-4-94?
A Right. So I would assume it did not occur before then.
Q So you think this was a document that you prepared after reviewing some press stories?
A No, I just know that it couldn't have occurred before the document upon which it appeared on the back of which it was written.
Q The document appears on the back of 12384, 12385, and then --
MR. KRAVITZ: It can't be on the back of more than one piece of paper.
BY MR. GIUFFRA:

83

Q It's on the back of 12385. Then the next document is 12387, so it appears to be four piece of paper, one document.
A Yeah. And all --
Q Why don't you take a look at the entire document, 12384 to 12387, and see if maybe that refreshes your recollection as to what is reflected on the note.
(Witness reviewed the document.)
A No, there's nothing in there that seems to relate to this document.
Q And you don't know what is reflected in the diagrams set forth on 12386?
A Do I know what's --
Q Do you have any understanding as to what is reflected in the diagrams contained on 12386?
MR. NUSSBAUM: What they mean?
(Witness reviewed the document.)
THE WITNESS: Well, I can tell you what each says. I cannot tell you the context in which any of it was written.
BY MR. GIUFFRA:

84

Q Why don't you tell us what they say.
A I can't read the top. It's "HRC, BC." I'm reading -- if you turn the page --
MR. NUSSBAUM: You're reading down the left-hand side of the page?
THE WITNESS: Right, yes. "It seems HRC, BC. M," and underneath it's "security." And then there's "MM" in a box and then a line down to "WDC" and then beneath those two is 7000 with a plus sign. And then "WDC to Security Bank, $7000. $20,800 BC loan." That's down the left side.
Then in the center --
Q Do you know what that transaction refers to?
MR. NUSSBAUM: He said it was a transaction?
MR. KRAVITZ: Is your question do those figures refer to a transaction?
BY MR. GIUFFRA:
Q Do you have any understanding as to whether these figures refer to any sort of transaction?
A I know what the allegation is that I think

85

these figures relate to.
Q What is the allegation that you think these figures relate to?
A There was an allegation that some of this -- that some of Madison Marketing, which I think is what MM stands for, either Madison Marketing or Master Marketing, I wish I knew what the name is, some of it made its way into Whitewater to the benefit of the Clintons.
I believe there are documents which you showed me last week that show a loan, I guess, from Madison Marketing or Master Marketing to Whitewater and then a check on a Whitewater account -- I don't remember whether it was at the Madison Savings & Loan or not -- to the Security Bank for a like amount. And the allegation was -- or the amount of money in the Whitewater account at the time the money was transferred in was not sufficient to cover the check out without the transfer in, and so the suggestion by that was that in fact some of Madison Marketing money or Master Marketing money went to Whitewater and benefited the Clintons.

86

The Clintons were on the Security Bank loan. The check from Whitewater to Security Bank was made to pay down that loan, and the check from Master or Madison Marketing to Whitewater supposedly was needed in order for there to be a sufficient balance in the account to write the second check.
Q Okay. This middle diagram is not one that you prepared?
A No.
Q And the diagram on the far left of the page -- far right of the page, excuse me.
A It says "S&L insolvent. FSLIC state, 1984, 1986." I can't read what's out beside 1986. Then it says "audit. 1987. Insolvency." Then there's a line. "Madison." Down here it says 1984. I believe that word is "fundraiser. 1985, S&L funds. No reports."
Q Do you know what these refer to?
A Again, I know what the allegations are.
Q What's the allegation on the top one?
A I don't know if there is an allegation on the top one. There was an allegation, you know,

87

about when the S&L became insolvent and who had responsibility for determining that, and I think this reflects that both FSLIC and the state, on a state chartered S&L, would have some responsibility.

Q Up until '87?

A Well, in '87 I think FSLIC put it into receivership, but basically if you want the answer, the state could not -- if you wanted to protect the investors, the state could not have put it into insolvency because unlike the Federal Savings and Loan Insurance Corporation, which protects investors funds, if the state had put it into insolvency, those people's funds would not have been protected, so it would require FSLIC to do it, and because Congress did not appropriate sufficient funds, FSLIC was not in the business during those years, even when S&Ls were in trouble, of closing them because there wasn't sufficient funds to cover the amount of dollars outstanding.

So between '86 and '87 there was an audit, I believe, a new audit after McDougal was removed that actually for the first time showed Madison to be

88

insolvent.

Q Do you know who performed that audit?

A I don't know. Frost & Company? I don't know. Never mind. I don't know. And that was the basis for I believe Beverly Bassett recommending or urging FSLIC to take over Madison.

Now, I think that's what that reflects. This (indicating), obviously there was an issue as to whether or not S&L funds --

Q Have you ever discussed -- I'm sorry, go ahead.

Have you ever discussed with Ms. Schaffer her regulation of Madison during the period 1984 through 1987?

A I think I have read most things Ms. Schaffer has written. I don't know, I don't know whether I've ever had a conversation with her about it, but I've read a series of letters she wrote to Mr. Gerth. I have reviewed a chronology of all of the documents reflected in the state securities commission file that reflect all of this.

Q Who would have prepared that chronology?

89

A I think it was prepared under Beverly Bassett's direction.
Q Did you ever discuss the chronology with Ms. Schaffer?
A I don't -- again, I don't think I've ever had a conversation with Beverly about the chronology or the regulation. I've had a conversation with her about how she felt like she was misportrayed in press reports relating to this matter.
Again, '84-85, no reports, issue about in the 1985 fundraiser that Jim McDougal held, whether or not any of those funds were S&L funds. And at the time they were unable to find, because I think the state only keeps records for a certain length of time, the campaign records, the campaign reports that reflected the contributions.
Now, again, I don't remember who told me this stuff or where it came from, but that's what I think all of that relates to.
Q Have you ever discussed with Ms. Schaffer her approval of a preferred stock transaction from Madison?

90

A Again, I don't believe I've ever had a conversation about her underlying regulation of Madison. I think the only conversations I ever had with her reflected her frustration about how she was portrayed in all of this. Now, again, I've read all the documents related to the underlying -- these underlying transactions.
Q Would it be your understanding that this chronology would have been prepared by the securities department of Arkansas?
A I think it was prepared -- no, I believe it was prepared -- she was no longer securities commissioner. I believe it was prepared from documents that were in the securities department's files but that it was prepared under her direction.
Q Oh, this is something she prepared after she had left her position?
A Right. And after all of this came up, to show her -- again, she believed that she had done everything that was within her power to try to bring this to the attention of the proper people and that any suggestion to the contrary was false.

91

Q Let me show you a document, Bates number 12389. Those are three White House note slips. If you could just read from left to right.
A Wooten Epes, and then there's a telephone number I cannot read. It looks like 501-376, 92 something something.
Q Who is Wooten Epes?
A Wooten Epes probably at this point was the director of the Arkansas Development Finance Authority.
Q Do you know when you would have prepared these note cards?
A No.
Q Clearly would have been something you would have done in at least '93 or '94 though?
A Or '95, but yes, sometime while I'm in the White House. Mark Hosenball, a reporter with Newsweek, so I think --
MR. NUSSBAUM: Read what it says. That's the question.
THE WITNESS: "ADFA, security department. Bad dealings by" I can't read the next word "security

92

salesman at Lassiter." And then I think it's "sanctioned." Can't read the next two. "Spring 1983, part of underwriting group." I think the next word is Reigny.
BY MR. GIUFFRA:
Q Do you know who Reigny is?
A Reigny is a Little Rock security firm. "George W. Balm," that's I think a Little Rock security firm. "Lassiter. Single family A and B, single family C, Stevens."
Q Do you know what this refers to, this note card?
A I believe it reflects that Lassiter participated in various underwritings of ADFA, primarily single family A and B and single family C, along with these other people, these other local security firms.
Then "Mark Hosenball, one, statement to the FBI regarding Roger Clinton."
Q Who is Mark Hosenball?
A He again is the Newsweek reporter. Again, I can't tell from this whether this is a conversation

93

directly with Mark Hosenball or not.
Q Or whether it's a conversation with Mr. Epes?
A Yeah, except it looks different, but again, I don't know.
Q Did you speak to Mr. Epes during 1993 about ADFA and Dan Lassiter?
A I don't know whether I spoke to him during 1993. I doubt it.
Q Since you've come to the White House, do you remember speaking to Mr. Epes about Dan Lassiter?
A Yes.
Q And what do you recall about your conversations with Mr. Epes about Dan Lassiter?
A I think Mr. Epes called me and told me that he had had a conversation with Mark Hosenball that's reflected on these notes and that these were the questions that Mark Hosenball was asking Wooten Epes.
Second card, "Mark Hosenball, statement to the FBI." By the way, one reason why it may not be the same, because it looks like I spelled Hosenbalm on the first card, b-a-l-m, and then b-a-l-l. It is

94

purely possible one to the other I could have done that. But I believe I also had a conversation at some point with Mark Hosenball around the same time. Usually when they call they didn't just call one person, they called several.
"Statement to the FBI regarding Roger Clinton. Advise net through. 1981-82. Employed by Lassiter. Clinton request. Aware that Lassiter was a" and then there's a blank.
"When did President Clinton learn" --
Q Let's just go back. Was a what?
A I don't know.
Q Let's go through this card. Is this Hosenball recounting questions to you, propounding questions to you?
A If I -- if you ask me to speculate, I would speculate yes.
MR. NUSSBAUM: Fortunately, he didn't ask you to speculate. He wants to know what you know.
THE WITNESS: Otherwise, all I know is what's on this card.
BY MR. GIUFFRA:

95

Q You have no recollection of the conversation?
A That's right. I do believe I spoke to Mark Hosenball at some point, but I don't recall the conversation.
Q And it's your understanding that -- do you have an understanding that Mr. Lassiter employed Roger Clinton during 1981-82?
A I have an understanding that Mr. Lassiter employed Roger Clinton. I don't know if I know what years.
Q And let's do the next card.
A Next card, which says page 3, "when did President Clinton learn, when did BC know of Lassiter drug use." And then it's "ADFA. Former secretary. Larry Case."
Q Who is Larry Case?
A I don't know if I know. Larry Case is, I believe, one of these people who has been out there on all these various networks, all of this stuff, doing the videos. I'm trying to remember whether Larry Case is the former ADFA employee who was fired

96

or not, and that I don't remember. There was one of them and I'm drawing a blank on whether that's Larry Case or not.
Q And what were the circumstances under which that employee was fired?
A He was making calls to the contras.
MR. NUSSBAUM: That's a good segue to another scandal that I like a whole lot better.
THE WITNESS: On state telephones and running up large bills, but I can't frankly remember whether that's Larry Case or not. He later sued Clinton. Anyway, that could be Larry Case. I'm just drawing a blank on that. "Larry Case bugging her. Rose Law Firm represents. Clinton's personal life. Larry Nichols."
BY MR. GIUFFRA:
Q Who is Larry Nichols?
A Now I'm confused whether Larry Nichols -- I think Larry Nichols is the former ADFA employee, I believe, who was making calls to the contras, not Larry Case.
Q Make sure the record is clear on that one.

97

MR. KRAVITZ: We don't want anyone to get sued over this transcript.

THE WITNESS: So anyway, well, I think Larry Nichols is the former ADFA employee who filed the lawsuit during the 1990 campaign and both Larry Nichols and Larry Case though, I believe, had been out there stirring up some of these stories.

I think Larry Case may consider himself to be an investigator.

BY MR. GIUFFRA:

Q And from looking at these cards, what is your best recollection of the allegations Mr. Hosenball was recounting?

A With respect to that last deal?

Q Yes.

A I have no idea.

Q What about the earlier, the second card?

A I think he was trying to determine when Clinton learned about Lassiter's drug use in relation to Lassiter's representation or participation in various bond issues that the state of Arkansas put out.

98

Q During '93-94 did you ever speak to the President about Dan Lassiter?

A '93-94? I don't remember.

Q Do you recall ever speaking to the President about Dan Lassiter?

A I remember there was an issue where they claimed that Bill Clinton gave Dan Lassiter a pardon. This was Governor Clinton, not President Clinton.

Q It was during the campaign?

A Was it during the campaign?

Q I'm asking you.

A I don't remember. There was an issue at some point in the press about Dan Lassiter getting a pardon, and I may have asked the President did he ever give Dan Lassiter a pardon. A governor has a limited ability in connection with federal pardons, I believe, to allow a person to get a gun -- to get a hunting license. The governor can't give him his gun back. But if he gets his gun back from the federal government, I think the governor can then give a pardon and that would allow him to get a hunting

license.
Q Let me ask you -- I'll show you the next document, 12390. Is this the back -- 12390, is this the back of these three cards?
A I have no idea.
MR. GIUFFRA: Do you know, Counsel?
MR. NUSSBAUM: I don't know but it wouldn't -- it's hard to imagine it would have worked that way. Well, maybe it could have. I don't know.
BY MR. GIUFFRA:
Q Now, the top of 12390, it says page 2 and at the top of 12389 it says page 3. Do you know if there's a page 1?
A 1, 2 -- if what you're saying is right, 1, 2, 3 (indicating).
MR. NUSSBAUM: Didn't your man in Little Rock look at these cards?
THE WITNESS: All of this relates to the same matter of Lassiter and Lassiter participating in Arkansas bond issues. And again --
BY MR. GIUFFRA:
Q Why don't you try to read through this

document 12390 and see if you can make some sense out of that.
A "Don Birdsong," who I don't know who that is, "Roger just been to New York. Not through talking." I don't know what that means.
Q Is that Roger Clinton that he's referring to?
A I have no idea.
Q Page 2?
A Page 2. "March 10, 1992, sensor, violating," violate or violation. "Excessive markup. Untrained" it looks like. And then I can't read the next work. "NASD 1994. Everyone knew. If he had known, reconsider. Complaints were made to people in governor's office. Stevens. Lapse of procedure. Louisiana State Racing Commission. Louisiana State Police. July 1993. Use and distribution of cocaine."
Q Do you know what this page refers to?
A I believe this top part refers to Lassiter.
Q What about --
A Lassiter & Company, excuse me.

101

Q What about Lassiter & Company?
A Well, I think he was saying that --
MR. NUSSBAUM: Who is he?
THE WITNESS: Probably Mark Hosenball was suggesting that Lassiter & Company had had all these problems and why did the state allow Lassiter & Company to participate in these bond issues. Okay. I believe that was what Mark Hosenball's question was.
BY MR. GIUFFRA:
Q Did you make any inquiries following your conversation with Mr. Hosenball?
A No. Lassiter & Company has been out of business since the '80s, so I mean --
Q Did you make any inquiries yourself while you were at the White House to try to find out about these allegations involving Lassiter and ADFA?
A No.
Q Didn't make any inquiries of anybody at ADFA?
A Well, I think I had at some point spoke to Wooten Epes. I don't think I ever spoke to Bob Nash

102

about it. He would be the only other person I think who would know.
Q Did you ever speak to Patsy Thomasson about it?
A I doubt it.
Q She had worked for Mr. Lassiter in the '80s, though?
A Yes, she had.
Q And you don't recall since 1993 speaking to her about Dan Lassiter?
A Again, I probably have spoken to her about Dan Lassiter, but I don't think I spoke to her about this allegation. Then it says "Louisiana State Racing Commission. Louisiana State Police. July '83. Use and distribution of cocaine." Wooten wasn't there, so maybe this is Wooten telling me that he wasn't there, wasn't at ADFA at the time.
MR. NUSSBAUM: You are now reading another --
BY MR. GIUFFRA:
Q The third column.
A The third column of this page, which is

103

12390. "Had to include local investment banking firms." Can't read the next line. "Approved locals. National ran the transaction. PaineWebber, Stevens, Lassiter, Reigny." I can't read the next one, but I would guess it's "Balm." "1994 NASD, 'acting against various traders dealers.' Wasn't made aware of it. State securities commissioner never made me aware." And then "contributor" -- I can't read the rest of it.

Q Do you believe this might be Mr. Epes speaking to you about what he was aware of?

A Well, the word "me" in there wasn't, wasn't made aware of me and I wasn't there or Wooten wasn't there, would suggest I think that that probably was my talking to Wooten.

Q Do you think all these cards reflect your conversation with Mr. Wooten or do you think it reflects a conversation -- two conversations?

MR. NUSSBAUM: Mr. Epes.

BY MR. GIUFFRA:

Q Epes, excuse me.

A The way the "Mark" -- again, I don't know.

104

Q What's your best -- what would be your best --

A I spelled Hosenball differently on two different cards. While I'm perfectly capable of doing it in the same series of notes, I would be less inclined at the same time. So my belief would be that someone put a piece of paper in front of me saying that Mark Hosenball had called me, spelled it b-a-l-l, and I then spelled his name b-a-l-l as opposed to b-a-l-m, so I do not -- my best guess is that they are not the same. The handwriting, frankly, looks different, the way the notes are written looks different.

Q Do you recall any other communications you might have had about Lassiter and ADFA during '93 or '94?

A And ADFA, no.

Q Anything just about Lassiter?

A '93 and '94? Maybe.

Q What might you recall about Lassiter?

A Oh, I at one time asked Patsy what prison life was like in connection with Web. Dan Lassiter

105

had spent some time in a prison and I asked her how he dealt with that.

Q Let me show you some other documents. This is 123 --

MR. KRAVITZ: Can we take a five-minute break?

MR. GIUFFRA: Sure.

MR. NUSSBAUM: Are you going to be done by 4:00?

MR. GIUFFRA: Hopefully. Off the record. Well, we can stay on the record. These documents are not documents that I believe come from Mr. Lindsey's files. I just want to make sure they're not his handwriting. Some of them might be. So maybe we could just plow through --

MR. NUSSBAUM: You could put them in front of them and let him go through them and tell you. Do you want to take a break first?

THE WITNESS: I'm fine.

MR. KRAVITZ: Let's just take a short break.

THE WITNESS: That's not my handwriting.

106

MR. GIUFFRA: We'll take a break.

(Recess.)

BY MR. GIUFFRA:

Q This is 12391, 12392, 12393.

A That is mine.

Q Do you recall preparing these notes?

A No.

Q Do you know when you might have prepared these notes?

A No.

Q Why don't you just read the notes in and we'll go through them.

A "August 2, 1978-McDougal, Clinton, 230 acres. Marion County for 202,611.20."

Q What does that refer to?

A On August 12, 1978, Jim McDougal and Bill Clinton bought 230 acres of land in Marion County for 202,000 --

MR. GIUFFRA: Off the record.

(Discussion off the record.)

THE WITNESS: "August 2, 1978 McDougal Clinton bought 230 acres in Marion County for

107

202,611.20. Mortgage" --
MR. NUSSBAUM: Just so we're clear by the way, have you asked him -- I don't remember whether you asked him whether he remembers generating these or what this is in response to.
MR. KRAVITZ: He said he didn't remember.
THE WITNESS: Stay awake.
MR. NUSSBAUM: I am awake. That was a tactical ploy.
MR. KRAVITZ: It's hard to stay awake.
THE WITNESS: "Mortgage 182,611.20. Union, 20,000."
BY MR. GIUFFRA:
Q What was it, "Union"?
A Union.
Q What does that refer to?
A Union National Bank.
Q The other is just a mortgage with do you know what bank?
A That's the bank I can't remember.
Q And then "personal."
A Personal.

108

Q Do you know what that refers to?
A Again, I don't remember making this document. I can tell you what I think that refers to. I can tell you what I think this entire document refers to, is I think I was walking through the Lyons report, trying to make sure I understood what the Lyons report was saying, so I think this was my sitting there and trying to get in my head exactly what happened when so that I, you know, could understand it well enough that I could explain it to somebody else.
MR. NUSSBAUM: Which is what you're now doing.
THE WITNESS: That's right.
BY MR. GIUFFRA:
Q Do you think that you prepared these documents while you were at the White House?
A Yes.
Q And the reference to "personal"?
A I believe meant that both the mortgage and the Union loan were personal to the Clintons and the McDougals.

Q Okay. Then the next reference?
A I believe -- there's a line down. I think the land was transferred to Whitewater Development Corporation on June 18, 1979. No, excuse me, I think Whitewater Development Corporation was incorporated maybe June 18, 1979 and the land was transferred on September 30, 1979.
Q Okay.
A "Loans from WDC to Clinton/McDougals, no promissory notes." Again, if you have the Lyons report, I think you would find a narrative, I believe, of some of this. I haven't looked at the Lyons report, but again, in effect, the loans -- that would be since the mortgage and all of this was personal, that when you transfer the land, you would transfer -- the corporation should pay you money for the land. There wasn't a transfer of money back to the Clintons and McDougals for the land, and so while there were no promissory notes, it's basically loans from Whitewater back to the principals for their equal share.
In 1985, substantially all the assets of

WDC were sold to Ozark Air Service, Inc. "Records personal --"
Q Do you know what that refers to?
A I believe it's a reference in there that in -- by 1995, the remaining lots at Whitewater were sold to Ozark Air Service, Inc.
"Records personal. Corporate records in Clinton's possession. Working papers of accountant Charles James. WDC federal income tax return '80 to '89. Clinton federal income tax return '78 to '89. Correspondence. Canceled checks." I think those are the documents that the Lyons report said that they relied upon.
Now, I think -- I'll read the next page. "1980. Where did the 222,060 come from, what was it used for. 1981, where did the additional 13,593.82 come from. Where did the $30,000 Madison Bank and trust loan go from." It did say "come from" and now it says "go." "1982, where did the additional" -- then it has 57,959.07." Then underneath that 35,714.42. Obviously I have subtracted.
"22,244.65 come from. 1983, how was the

111

$30,000 loan paid down to 28,000. 1984, how was the $28,000 loan paid down to 20,800.

"1985, where did the $2000 difference between the Madison loan and the Security loan come from. 1986, how was the $18,800 loan paid down to $13,800.

"1987, where did the additional $59,594.58," underneath that, 57,959.07. A line. I clearly subtracted. "1,635.51 come from."

"What caused the bank loan to increase from 13,800 to $14,117.59 (interest?)"

Q If you could just describe the transactions that you believe are stated on this page.

A You'd have to look at the report. I think if you looked at the exhibit to the report, these numbers are on there, and I think I was asking as I looked at it questions I had that I wanted to have answered or I need to do have answered so I would have an understanding of the transactions.

Q And these were questions that you were going to put to Mr. Lyons?

A Probably, if I -- if I couldn't figure them

112

out otherwise.

"1988" --

Q We can see -- '88, '89, '91, do you know what this refers to?

A Again, I think more of the same.

Q And do you recall whether you ever spoke to Mr. Lyons about the questions that are set forth on 12392?

A I don't know if I spoke to him and asked him these specific questions. I at some point, but I couldn't do it today, had an understanding from year to year how the differences came about, but I don't remember quite how. I mean, I don't know all the sources that I learned that from or figured it out from.

Q Let me show you this document. This bears Bates number 12420. Have you ever seen that before?

A About an hour ago.

Q During the fall of 1993, did you speak to Loretta Lynch about anything having to do with Whitewater, Madison or David Hale?

A I don't think so.

113

Q Do you recall speaking with Lisa Caputo during the fall of 1993 about Whitewater, Madison or David Hale?
A I have a vague memory that I did.
Q Do you have any recollection as to what you might have spoken to Lisa Caputo about in the fall of 1993 about Whitewater, Madison --
A I think she was getting calls and was calling me to ask me about it.
Q Do you recall anything more specifically about your conversations with Lisa Caputo?
A No. I mean, I have a vague memory as to where it took place. Well, I have a memory because it's reflected on the document.
Q Where?
A It's reflected on a document.
Q Are these your documents or are these --
A It's one you've already seen.
MR. NUSSBAUM: Which one, Bruce?
BY MR. GIUFFRA:
Q Which document?
A This document has Lisa Caputo's name and I

114

believe that's Lisa's phone number.
Q This is the document that bears the Bates number BL 70.
A Yeah, we talked about this last time I was here.
Q When do you think -- you think you called her from when you were in --
A San Francisco.
Q What do you recall about that conversation?
A I don't recall the conversation. I just think -- I have a vague memory partially from this that I called her back.
MR. GIUFFRA: Off the record for a second.
(Discussion off the record.)
MR. GIUFFRA: Back on the record.
Mr. Lindsey has referenced us to a document bearing Bates number BL 70 which was a document that I think we believe was probably discussed in the hearings in the summer of 1994 in fact on Treasury-White House contacts.
BY MR. GIUFFRA:
Q And Mr. Lindsey, why don't you just briefly

115

indicate what you recall about Lisa Caputo and this conversation which was presumably October 4, '93 or thereabouts.

A This conversation reflects, I think, primarily a conversation I had with Jim Lyons. I think at some point I have a memory that during that day, I got -- I was also told that Lisa Caputo wanted to speak to me. I have Lisa Caputo's name and I have over here -- it's not in the same area -- 62960, which I believe maybe is Lisa's phone number.

I believe I called her back and had a short conversation with her about the questions that Gerth and Isakof -- again, this is all being generated by press inquiries to the White House, to Jim Lyons, to Loretta Lynch. All of the press, Gerth, Isakof primarily, are calling all of these various people and asking all of these questions after -- by the way, if you're going to have Jean Lyons -- after apparently leaks from the RTC about criminal referrals.

MR. KRAVITZ: You mean Jean Lewis.

THE WITNESS: Excuse me, Jean Lewis. I've

116

never heard her asked whether or not -- never mind.

BY MR. GIUFFRA:

Q Mr. Lindsey, do you have an understanding as to whether Ms. Lewis leaked any RTC information?

A I have no understanding whatsoever, but I think it's a good question.

Q Have you ever done any sort of research into Ms. Lewis?

A No.

Q Or directed anyone to do any research into Ms. Lewis?

A No.

Q Have you ever reviewed any what might be described as opposition research regarding Ms. Lewis?

A No.

Q Do you know whether anyone at the White House prepared any documents, talking points adverse to Ms. Lewis?

A No. I wrote it out the first time as G-e-n-e. I thought she was a man. Anyway, I'm sorry I brought that up.

MR. NUSSBAUM: Answer his questions.

117

THE WITNESS: Anyway, I have some vague memory that in the same time I was talking to Jim Lyons, I called Lisa back.

Now, I don't remember -- you know, I don't remember what Lisa told me versus what Jim Lyons -- I don't think Lisa told me anything other than she had had some calls, but it's a very vague memory, partially reinforced by the fact that her name and telephone number appear on this.

BY MR. GIUFFRA:

Q And what did -- and Mr. Lyons told you what?

A That he had talked to Loretta Lynch, that she was getting calls, that she told them that they should talk to Lyons, that he had talked with Gerth and Isakof, that Gerth had all of the records of examination in connection with Madison Guaranty, that Gerth had an RTC source, that there were nine criminal referrals.

Then I have "Blakely Brandt, tax show home."

Q Did you discuss -- and then you

118

subsequently discussed that with the President and you testified --

A Subsequently told the President that my understanding was that there were -- that the press knew or there were stories out there that there were criminal referrals relating to Madison that mentioned him.

Q And you recall discussing those criminal referrals with Ms. Caputo?

A No, I don't remember anything about my conversation with Lisa Caputo.

MR. NUSSBAUM: That's where we should have left it about five minutes ago.

BY MR. GIUFFRA:

Q Let me show you another document. Is this your handwriting?

A No.

Q This was a document that bears Bates number 12422 -- 12421.

A No.

Q Let me show you a document 12424 through 12427?

119

MR. NUSSBAUM: Do you want to know if he wrote that?
BY MR. GIUFFRA:
Q Have you ever seen that document before?
A I don't believe so.
Q So you would not be the author of this document?
A No.
Q Let me show you another document which bears the Bates number BL 140 through 148. Have you ever seen that document before?
A Yes.
MR. NUSSBAUM: Where's the Bates number? I don't think it says BL.
BY MR. GIUFFRA:
Q I'm sorry, I made a mistake. It's not yours. 140 to 148.
MR. KRAVITZ: Wait, wait. In what series?
MR. GIUFFRA: I think it's a different production.
THE WITNESS: There may be more than one document.

120

BY MR. GIUFFRA:
Q My question is, what is the context in which you saw this document?
MR. NUSSBAUM: This is not a document --
BY MR. GIUFFRA:
Q Have you ever seen this document before?
A Yes.
MR. NUSSBAUM: Wait, wait, this document refers to what? There appears to be a bunch of -- we haven't established that this is one document. I think he said it may not be.
THE WITNESS: I think that's all one document.
MR. NUSSBAUM: You do? All right.
BY MR. GIUFFRA:
Q When do you recall seeing this document?
A After Jim Leach released it to the press.
Q Was the document faxed to you?
A Ultimately, yes. I think from multiple sources.
Q Do you know whether anybody at the Treasury Department might have faxed it to you?

121

A Well, there's -- you have a document of mine that has a fax sheet on it, I think, that reflects who sent it to me.
Q Who do you believe sent it to you?
A No, excuse me. I believe Jean Hanson sent it to Bernie Nussbaum, who gave it to me, and you have a fax sheet that reflects that. You know, you've had that document since before the first hearings.
Q Okay. And do you recall giving this document to Jim Blair?
A No.
Q Do you recall giving this document to Jim Lyons?
A Maybe. I mean I gave documents to Jim Lyons. I don't recall giving that document to Jim Lyons, so the answer is no, but it is possible I gave it to Jim Lyons.
Q If Mr. Blair had this document, would you likely be the person who would have given it to him?
A No.
Q Or you just don't know. Okay.

122

MR. GIUFFRA: I do not have any further questions. Thank you very much.
MR. NUSSBAUM: Neil, do you have any questions? I don't.
MR. KRAVITZ: I actually may have one. Can I just see that one document, the October 4 document that you were looking at for a second?
MR. NUSSBAUM: BL 00070.
EXAMINATION
BY MR. KRAVITZ:
Q I actually do have one question. This document, BL 70, indicates that there's an RTC source. What does that refer to?
A I believe that Jeff Gerth told Jim Lyons that he had an RTC source.
Q And Jim Lyons told that to you?
A Yes.
Q On October 4, 1993?
A Right, right. Either Gerth or Isakof, but one of the reporters he had spoken to told him that he had an RTC source.
Q Did Mr. Lyons indicate to you the identity

of that source within the RTC?

A Oh, I don't think Mr. Lyons knew. No.

Q And have you since learned who that source within the RTC was?

A No.

MR. KRAVITZ: That's all I have. Thanks.

MR. NUSSBAUM: Thanks for clearing that up.

MR. GIUFFRA: Thank you very much. That concludes the deposition.

(Whereupon, at 3:22 p.m., the deposition was concluded.)

BRUCE LINDSEY

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, CARMEN BUNCH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Carmen Bunch

Notary Public in and for the
District of Columbia

My Commission Expires MARCH 14, 1998

DEPOSITION OF RICHARD L. MAYS
IN RE: S. RES. 120

TUESDAY, NOVEMBER 21, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Telephone deposition of RICHARD L. MAYS, called for examination pursuant to notice of deposition, at 11:05 a.m. in Room 538 of the Dirksen Senate Office Building, before JULIE BAKER, a Notary Public within and for the District of Columbia, when were present:

LOUIS J. GICALE, ESQ.
Majority Deputy Special Counsel
NEAL E. KRAVITZ, ESQ.
Minority Principal Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

CONTENTS

WITNESS	EXAMINATION
Richard L. Mays	
by Mr. Gicale	3
by Mr. Kravitz	40
by Mr. Gicale	42

PROCEEDINGS

MR. GICALE: Mr. Mays, the stenographer would like us to put this on the record and that makes sense.

You've indicated that you would consent to being sworn over the phone for this deposition by phone.

MR. MAYS: Yes.

Whereupon,

RICHARD L. MAYS

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. GICALE:

Q Could you please state your name for the record.

A Richard L. Mays.

Q And your present business address.

A 415 Main, Little Rock, Arkansas 72201.

Q And you're an attorney practicing in Little

Rock?

A Yes.

Q What is the name of the firm?

A Mays & Crutcher, PA.

Q And you are the named partner in that firm; is that correct?

A Yes.

Q And how long have you been practicing as a partner with Mays & Crutcher?

A Since on or about -- since 1977, '78.

Q And what kind of a practice is that?

A General practice.

Q Mr. Mays, this deposition is being conducted pursuant to Senate Resolution 120. The resolution establishes a Special Committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, Capital Management Services, Incorporated, the Arkansas Development Finance Authority and other related matters.

Section 1(b)(2)(b) and 1(b)(3)(e) of the

5

resolution authorizes as follows: First, section 1(b)(2)(b) authorizes the Special Committee to conduct an investigation and public hearings and study of the following matters arising out of the investigation of the public hearings concluded by the Committee on Banking, Housing and Urban Affairs prior to the adoption of this resolution.

Section (b) is "whether the White House engaged in improper contacts with any other agency or department in the government with regard to confidential RTC information relating to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation"; section 3(d), to conduct an investigation and public hearings into and study of all matters that may have any tendency to reveal the full facts about the sources of funding and the lending practices of Capital Management Services, Incorporated and its supervision and regulation by the Small Business Administration, including any alleged diversion of funds to Whitewater Development Corporation.

That is the scope of today's deposition,

6

and furthermore, we sent you a letter indicating to you that we wanted to depose you by phone with respect to all contacts you may have had with anyone about the David Hale investigation or indictment between May 5, 1993 and November 8, 1993; correct?

A Yes.

Q Now, this deposition is being conducted in advance of a public hearing that will occur again next week. We will be asking you a series of questions. You're testifying under oath. If you don't understand a question, please let us know.

The stenographer will be preparing a record of questions and answers. The deposition will be treated as committee confidential until the commencement of the hearings. Prior to the hearings, you will receive a letter from the Committee telling you that you may come to the Senate to review the transcript of your deposition and make note of any corrections for transcription on an errata sheet.

A I need to come to the Senate?

Q No. And since you are from Little Rock, we can try to make some arrangements otherwise to make

7

this available for you.
A Okay.
Q If you're called to testify at a public hearing, you will be permitted to have a copy of your deposition transcript four days in advance of your testimony.
You may be represented by counsel. I take it you are alone there in Little Rock or do you have somebody there with you?
A I don't have anybody with me. I'm alone on my phone.
Q Okay. Objections to the forms of the questions will be noted for the record. Counsel may object on grounds of privilege or relevance and the committee chairman may rule on objections where the witness refuses to answer a question.
Do you have any questions before we get started?
A The only question is I'd like a copy of the authorization that you just read. If you could provide that to me, I'm not sure I recall what that was --

8

Q Senate Resolution 120?
A Yes.
Q You want it before we go further?
A No. Just send me a copy of that.
Q Okay.
Any other questions at this point?
A No.
Q Mr. Mays, do you know David Hale?
A Yes.
Q How do you know him?
A What do you mean, how do I know him?
Q What's the nature of your relationship with David Hale?
A I met David Hale through his brother Miles Hale when I was in law school, I believe, or shortly thereafter when his brother was running for prosecuting attorney for Pulaski County and I subsequently worked with him as a deputy prosecuting attorney in the Pulaski County prosecuting attorney's office in Arkansas.
Q Worked with David or his brother?
A I worked with David.

9

Q And how long did you work with him?
A I don't know. A year and a half, in that range. I'm not certain.
Q Since working with him during that time period, did you continue to have any kind of business or other type of relationship with him?
A I don't recall any business relationship, but I had a social relationship.
Q And that has continued to this day?
A Yes.
Q How frequently do you see -- have you seen Mr. Hale?
A I don't see him frequently. It would be hard to estimate, but it would be infrequent.
Q It's a social relationship?
A Yes, he is a lawyer and a judge. I would occasionally appear in his municipal court and I would occasionally see him in some social contact, not designed to meet with him, but as a rule, just visit with him when I saw him, and we would chat.
Q Have you ever represented him?
A Briefly.

10

Q When was that?
A Shortly after he received -- after he was indicted.
Q After September 23 --
A I don't remember when he was indicted but if that's when he was indicted, after September 23.
Q How long did you represent him?
A Oh, generally I represented him in conjunction with another attorney by the name of -- oh, let me think. I'm having trouble recalling his name, but we met with the U.S. Attorney relating to the charges to determine how substantive those charges were. And based on the substantive nature of the charges, I determined that it would be too demanding on my time to assist him any further in connection with that particular matter. And I would say that that was maybe 30 days.
Q Who did you meet in the U.S. Attorney's office?
A The attorney who was handling that case there. I can't remember. Bear -- I don't remember the name. If you told me the name, I would remember.

11

Q Did you meet with Paula Casey?
A No.
Q Did you meet with Fletcher Jackson?
A Fletcher Jackson.
Q Did you meet with Michael Johnson?
A No.
Q Did you meet with anyone else in the U.S. Attorney's office?
A I'm not sure he was indicted at that time. No, Fletcher Jackson was the attorney we met with.
Q Was it prior to his indictment?
A I'm not sure. It was either very close or right after his indictment. It was after the subpoena had been issued for all of his documents. I do remember that. And I'll think of the name of the attorney with whom I met who was accompanying me.
Q Was it Mr. Price?
A Price, Dale Price.
Q Bill Price or Dale Price?
A I think Dale, but Mr. Price.
Q Dale Price?
A Right.

12

Q Do you know Randy Coleman?
A Yes.
Q Would this have been before Randy Coleman represented David Hale?
A Yes.
Q Mr. Coleman represented David Hale in August of 1993. Are you aware of that?
A I'm not sure when -- I'm not sure about dates.
Q In terms of your representation, it occurred before Mr. Coleman's representation; is that correct?
A I think so, yes.
Q When you said after there was a subpoena for his documents, are you aware of a search of his offices for documents?
A I don't recall that there was a search. I just know that he shared the subpoena with me, gave me a statement relating to the matter, I guess, which would be privileged and asked me to assist temporarily, at least, and I did.
Q Were you present when the FBI went to his

13

offices in July of 1993 to obtain records?
A No.
Q You're aware of the fact that the FBI did go to his office to obtain records?
A No.
Q Did he indicate to you that the FBI had come to his office to obtain records?
A I don't recall.
Q For a point of reference, in terms of your representation, did you begin to represent him shortly after records were obtained from him?
A Yes.
Q Would these have been records obtained from him from the FBI?
A These would have been records obtained from him pursuant to some subpoena that he was served with, a copy of which he gave me.
Q Earlier, you indicated that you've got a general practice of law. How much criminal work do you do?
A Very little now.
Q Now, the Mr. Price that you referred to, is

14

he in your firm, or does he practice in another firm?
A He's not in my firm.
Q Did Mr. Price bring you into the case, or did you bring Mr. Price into the case?
A Neither.
Q Did Mr. Hale bring both of you into the case?
A I know he brought me into the case, and I believe -- I assume he brought Mr. Price into the case.
Q After Mr. Hale -- after you decided to represent Mr. Hale, at least before Mr. Coleman became involved, who did you contact other than Fletcher Jackson?
A I don't think I contacted anybody.
Q Do you know Mr. Pence from the U.S. Attorney's office?
A Mr. Who?
Q Pence.
A Yes.
Q He was the acting U.S. Attorney before Paula Casey?

15

A Did I know that he was?
Q Yes, did you know that he was.
A No, not really.
Q At the time you talked to -- how many times did you talk to Mr. Jackson about David Hale's case?
A Once.
Q Was that at the U.S. Attorney's office?
A Yes.
Q Was anyone else present besides Mr. Price?
A No.
Q How long did you meet?
A I would have to estimate that.
Q What's your best estimate?
A 30 minutes to an hour.
Q Now, was the purpose of that meeting to obtain a disposition in the case or just to obtain information with respect to whether or not you should continue to represent Mr. Hale?
A Information as to whether or not I should continue to participate.
Q Now, after that meeting -- how long after that meeting did you make a determination that you

16

would not continue to represent Mr. Hale?
A Oh, not long after that meeting. I don't remember specifically how long, but not long after that meeting.
Q Why was it you made a determination that you could not continue to represent Mr. Hale in the matter?
A Because it appeared that this matter was going to require substantial time and much more involvement than I was able to commit to the matter.
Q Did you have any concerns with respect to any conflicts of interest you might have?
A No.
Q As a result of that meeting -- strike that.

When Mr. Hale first came to you and said that some records had been subpoenaed, did he -- do you know if that could have been as early as May of 1993?
A I just don't remember when that was, but I would suggest that it would be sometime around the time that the subpoena was served on him and the

documents were taken from his office, but I don't recall when it was.

Q But you're talking about documents taken from his office as opposed to a request, for instance, from the SBA that might have occurred earlier in the year?

A Right. I'm assuming he turned the documents over. I don't recall the specifics about how the documents were transferred from Mr. Hale to the federal authorities.

Q Now, the SBA referred this matter to its inspector general on May 5, 1993, and some records were ultimately obtained later in July 1993. Did he come to you between May 5, 1993 and the latter part of July 1993?

A I don't know, but I think closer to July, now that you mention July, but I don't really remember when we had the conversation.

Q At the time that you met with Mr. Jackson in the U.S. Attorney's office, did he indicate to you that the investigation would lead to other -- might possibly lead to any other individuals other than

David Hale?

A There were two other individuals that were involved, and he mentioned those two other individuals.

Q Which two?

A I don't remember their names.

Q Did he mention Mr. Tucker's name at the time?

A No.

Q Did he mention the Clintons at the time?

A No.

Q Did he mention Mr. McDougal at the time?

A No.

Q Between the time that he asked you to represent him and the time that you met with Mr. Jackson from the U.S. Attorney's office, did you attempt to contact anyone on David Hale's behalf?

A No.

Q How long after he came to you did you call up Fletcher Jackson to set up a meeting?

A Dale Price called Fletcher Jackson, and I don't remember how long, but it wasn't that long.

Q So Price is the person that set the meeting up, and you went along with him?
A Yes.
Q Did you travel to Washington between May 5, 1993 and November 8, 1993?
A May 5, 1993 and November 8, 1993?
Q Yes.
A Yes, yes.
Q And how many times?
A I don't recall.
Q Would it be more than several? Is it something frequent that you do?
A I traveled to Washington frequently between May 5, 1993 and November 8, whatever, 1993.
Q As often as once a week or once a month?
A Yes.
Q Yes, which is it, once a week or once a month?
A At least once a month -- more than once a month, I would say. I'm not sure it would be as much as once a week, but certainly once a month.
Q And what is the purpose of your coming to

Washington?
A Business related to my business activities.
Q Your legal practice?
A Social activities related to my income opportunities and matters that related to my business activities there, nonpolitical activities.
Q You said something about political activities?
A Nonpolitical.
Q Between May 5, 1993 and November 8, 1993, did you visit the White House?
A Between May 5, 1993 --
Q And November 8, 1993, did you visit the White House?
A Possibly. I don't really recall specifically. It's possible.
Q How many times?
A I wouldn't have any idea of knowing that. I'm not even sure I did, but it's possible that I did.
Q If you did, what would have been the purpose of your visit?

21

A It could have been associated with a DNC function. Probably that would have been the purpose of the visit.
Q So it could have been one time, it could have been more than once?
A It could have been one. It could have been more, right. But they would probably have all have been associated with a DNC function.
Q Is there someone from the White House that would have arranged for you to be there?
A No. Somebody from the Democratic National Committee would have had a function that was being hosted by the White House.
Q Did you go to the White House for any other purpose other than -- if you went to the White House during that time period, could you have gone for any other purpose other than a DNC purpose?
A Not that I can recall.
Q Have you ever gone to the White House for any other purpose other than a DNC purpose?
A Other than a DNC function, during that period of time?

22

Q No, any time.
A Yes.
Q What other purposes have you gone to the White House?
A What do you mean what other purpose? I don't know what you mean by that question, what other purpose.
Q Well, what were the other reasons for going to the White House, other than a DNC function?
A I know people in the White House, so I might have gone to visit people I know in the White House.
Q Who do you know in the White House?
A I know several people.
Q Do you know Bill and Hillary Clinton?
A Yes.
Q How long have you known them?
A Since he was -- since -- I don't remember how long, but certainly since he was, oh, attorney general.
Q And what's the nature of your relationship to the Clintons?

23

A Friend.
Q Did you work -- is that a -- so that's a social relationship or a business relationship?
A A social relationship.
Q And that's been the case since he was attorney general?
A Yes.
Q And you've known his wife since that time period as well?
A Approximately. I was in the legislature in Arkansas between '73 and '77, and I think I first met President Clinton when he spoke to the legislature during the period of time that I was a member of it.
Q So you've had a business and a social relationship with him since the mid-'70s; is that correct?
A Yes. I wouldn't say business, but a social relationship.
Q How frequently do you see him?
A Infrequently.
Q How frequently did you see him in 1993?
A Infrequently.

24

Q Prior to his becoming President, how frequently did you see him?
A Infrequently.
Q Who else do you know at the White House?
A I know Bruce Lindsey.
Q And what's the nature of your relationship with Mr. Lindsey?
A Social.
Q How do you know him?
A He was a lawyer in Little Rock at the firm of Wright, Lindsey & Jennings.
Q And again, you said social as opposed to a business relationship?
A Yes.
Q You met him through activities in the Bar there or some other manner?
A Activities through the -- in my professional association with the Bar and in my practice.
Q And did you meet him through Mr. Clinton?
A No.
Q And how frequently do you see Mr. Lindsey?

25

A Infrequently.
Q What about in 1993?
A Infrequently.
Q Is there anyone else in the White House that you knew in 1993?
A Yes. I'm not sure I can come up with all of the persons that I know, but all of the persons that I know I've seen infrequently.
Q Did you know Bill Kennedy?
A Not well.
Q What was the nature of that relationship, business or social?
A I didn't really know Mr. Kennedy very well, and I knew of Mr. Kennedy and I met him once or twice, but I wouldn't call my relationship anything but a mere acquaintance.
Q What about Mack McLarty?
A Yes. What about Mack McLarty?
Q What's the nature of your relationship with Mr. McLarty?
A Social.
Q And how long have you known him?

26

A I've known him since college, since law school, since my law school years.
Q And you've maintained a social relationship with him since that time?
A Yes.
Q How frequently do you see him?
A Infrequently.
Q And how frequently do you talk to him?
A Infrequently.
Q Do you know a Marsha Scott?
A Yes.
Q What's the nature of your relationship with her?
A Acquaintance.
Q How long have you known her?
A Oh, not long, not really. I mean, I would characterize my relationship with her much as I would characterize my relationship with Kennedy.
Q And you've just met her a few times?
A A few times, yes.
Q Did you know Vince Foster?
A Yes.

27

Q And what was the nature of your relationship with him?
A I practiced law with him -- against him, I should say, and I knew him professionally and socially.
Q Did you know Bernard Nussbaum when he was in the White House?
A No, not really. I mean, I met him but I didn't really know him.
Q What about Maggie Williams?
A I knew Maggie Williams.
Q And what's the nature of your relationship with Maggie Williams?
A Social relationship.
Q And how long have you known her?
A Only since '93.
Q And Cliff Sloan or Steve Neuwirth, did you know them?
A No.
Q Webster Hubbell, did you know him?
A Yes.
Q What was the nature of your relationship

28

with Webster Hubbell?
A Professional and social..
Q And how long have you known Webster Hubbell?
A Oh, I'm not really sure, but certainly since he was practicing law in Little Rock.
Q Between May 5, 1993 and November 8, 1993, did you talk to the Clintons about the David Hale investigation or indictment?
A No.
Q Did you talk to Bruce Lindsey about the David Hale investigation or indictment?
A No.
Q Did you talk to Bill Kennedy about the David Hale investigation or indictment?
A No.
Q Did you talk to Mack McLarty about the David Hale investigation or indictment?
A No.
Q Did you talk to Marsha Scott about the David Hale investigation or indictment?
A No.

29

Q Did you talk to Vince Foster about the David Hale investigation or indictment?
A No.
Q Did you talk to Bernard Nussbaum, Cliff Sloan, Steve Neuwirth or Maggie Williams about the David Hale investigation or indictment?
A No.
Q Did you talk to Webster Hubbell about the David Hale investigation or indictment?
A No.
Q And again, that's during this time period, May 5, 1993 to November 8, 1993, and your answer is no for all these people during this time period; correct?
A Yes, that's my answer.
Q Did you talk to anyone at the White House between May 5, 1993 and November 8, 1993 about the Hale investigation or indictment?
A No.
Q Did you talk to anyone during this same time period about a possible investigation of Governor Tucker?

30

A No.
Q During this time period, May 5, 1993 to November 8, 1993, did you talk to anyone at the Department of Justice about the Hale investigation or indictment?
A No.
Q During the same time --
A Well, other than Fletcher Jackson, but I'm not sure when that occurred.
Q Did you talk to -- during this same time period, did you talk to anyone at the Justice Department about a possible investigation of Governor Tucker?
A No.
Q On any of your visits to Washington between May 5, 1993 and November 8, 1993, did you talk to anyone in Washington about the Hale investigation or indictment?
A No.
Q Between May 5, 1993 and November 8, 1993, did you talk to anyone at the U.S. Attorney's office in Little Rock about the Hale investigation or

31

indictment other than Fletcher Jackson?
A Not that I can recall.
Q Between those same dates, did you talk to anyone at the FBI office in Little Rock about the Hale investigation or indictment?
A Not that I can recall.
Q During that same period of time, May 5, 1993 to November 8, 1993, did you ask anyone to talk to someone in Washington about the Hale investigation or indictment?
A No.
Q During that same time period, did you talk to Bob Nash about the Hale investigation or indictment?
A Not that I can recall.
Q During that same time period, did you talk to Betsey Wright about the Hale investigation or indictment?
A Not that I can recall.
Q During that same time period, did you talk to Loretta Lynch or David Kendall about the Hale investigation or indictment?

32

A No.
Q Do you know David Kendall?
A No.
Q Between May 5, 1993 and November 8, 1993, did you talk to Randy Coleman about the Hale case?
A I don't know when I talked to Randy Coleman, but I did have a conversation with Randy Coleman.
Q Would that have been before Randy Coleman became Mr. Hale's attorney?
A No.
Q It was sometime afterwards?
A Yes.
Q Do you know whether it was after Mr. Hale was indicted?
A I'm not sure, but Mr. Hale was present.
Q Do you know whether it was September or October of 1993?
A No.
Q During that same time period, did you talk to Jim or Susan McDougal?
A No.

33

Q Did you talk to their attorneys, Sam Heuer or Jennifer Horan?
A No.
Q During that same time period, May 5, 1993 to November 8, 1993, did you talk to an individual by the name of Haley who represented Mr. Tucker?
A I may have talked to him.
Q Now, what's his first name?
A John Haley.
Q Did you talk to him about the Hale investigation?
A No.
Q During this time period, did you talk to Mr. Tucker about the Hale investigation?
A No.
Q Have you ever represented Mr. Tucker?
A No.
Q Do you know Mr. Tucker?
A Yes.
Q What's the nature of your relationship to Mr. Tucker?
A I have known Mr. Tucker since I was in law

34

school. I went to law school with Mr. Tucker.
Q Is your relationship a business or social relationship?
A Both.
Q How frequently do you see him?
A Infrequently.
Q Are you involved in any way in a Tucker legal defense fund?
A Yes.
Q What's your involvement in that fund?
A I have not had any real involvement, but I helped assume the responsibility of trying to help with respect to raising money for the legal defense fund.
Q Are you in charge of that fund?
A Well, I have a -- I wouldn't say -- I haven't raised any money, so I'm not on any account which disburses money with respect to the fund and I haven't raised any money as of yet.
Q Are you involved in a McDougal legal defense fund as well?
A No.

35

Q When did you become involved with a Tucker defense fund?
A I don't really recall specifically, but obviously after he was charged or indicted.
Q When did you first become aware of the fact that Mr. Hale had been making allegations against Mr. Tucker and Bill Clinton?
A When I read it in the paper.
Q That would have been September of 1993?
A I don't really remember when that was, but that's when he came to me with those allegations.
Q At the time you read about those allegations, were you still representing Mr. Hale?
A I don't think so, no.
Q How soon after you read about those allegations did you become involved in a Tucker defense fund?
A I don't know, but I don't think the two related, but I don't know. I didn't sense -- I didn't become involved in the Tucker defense fund until he was indicted, until after that.
Q Do you know a Stephen Smith?

36

A Yes.
Q How do you know him?
A I served in the legislature with Stephen Smith.
Q Do you continue to maintain a social and business relationship with him?
A When I see him, I talk to him and we talk. We're friends.
Q Do you know a Brent Bumpers?
A I know Brent Bumpers, yes.
Q And what's the nature of your relationship with Brent Bumpers?
A Acquaintance.
Q It's a social relationship?
A Yes.
Q How long have you known him?
A Oh, I can't -- you know, I met him professionally really after he became a lawyer.
Q Do you know a Turner Bowie?
A Who?
Q Turner Bowie, B-o-w-i-e?
A No.

37

Q Did you talk to Brent Bumpers about the David Hale investigation or the Tucker investigation?
A Not that I can recall.
Q Other than Fletcher Jackson, did you contact anyone on David Hale or Tucker's behalf?
MR. KRAVITZ: I think he testified that he didn't contact Fletcher Jackson.
MR. GICALE: I'm sorry. He did have contact --
MR. KRAVITZ: He said he had a conversation with him. He said he did not contact him.
MR. GICALE: Right.
MR. KRAVITZ: Is that right, Mr. Mays?
THE WITNESS: Yes, that's correct.
MR. KRAVITZ: Probably should rephrase that question.
MR. GICALE: I'll rephrase it.
BY MR. GICALE:
Q Did you contact anyone on David Hale's behalf?
MR. KRAVITZ: During that time period?
MR. GICALE: Between May 5, 1993 and

38

November 8, 1993.
THE WITNESS: Not that I recall. There was a letter that I may have written to the SBA relating to his Capital Management, Inc., which was being threatened, which the SBA was getting ready to take from him, and he had some potential persons who might -- there were some people who might have been interested in buying it from Pine Bluff, and I might have written a letter to the SBA asking for additional time on his behalf to make arrangements to maybe transfer that entity.
BY MR. GICALE:
Q Do you know who at the SBA you contacted?
A No, no.
Q Would that have been prior to the receivership -- just prior to the receivership?
A Probably, yes.
Q Would it have been someone at the SBA in Washington or somewhere else?
A Probably Washington. I wrote a letter. I'm not sure, whoever was the head of the SBA at that time, whoever -- you know, I didn't have any

39

telephone conversation. I just --
Q It was just a letter. There was no phone conversation?
A Right, not that I recall.
Q When you came to Washington between May 5, 1993 and November 8, 1993, did you contact anybody at the SBA on David Hale's behalf?
A I don't recall, other than the letter. And when we say on his behalf, we're relating it to his interest in Capital Management, and it didn't have anything to do with any kind of investigation or indictment.
Q Are you aware of whether or not anyone else went to Washington to advocate on behalf of David Hale between May 5, 1993 and November 8, 1993?
A You mean with respect to the SBA issue?
Q The investigation.
A I'm not aware of anybody who has contacted anybody in reference to -- on behalf of David Hale with respect to any investigation.
Q What about Bill Price, do you know whether or not he went to -- I'm sorry. Is it Bill Price or

40

Dale Price?
A Dale Price. I'm referring to Dale Price anyway.
Q Do you know whether or not he went to Washington during that time period?
A No.
Q Do you know whether or not he contacted anyone from -- called anyone in Washington --
A No.
Q -- during that time period?
A No.
MR. GICALE: I'm not quite through with my questions, but I know you have to go and Mr. Kravitz is here and he'd like to ask a few questions. So let me just -- for the time being, I'll defer to him, and I know we only have a few minutes, but I want to give him an opportunity to ask some questions. And we'll see where we are at the end of his questioning.

EXAMINATION

BY MR. KRAVITZ:
Q Mr. Mays, this is Neal Kravitz, Democratic counsel, and I just have a couple of follow-up

41

questions to ask you.
When you and Mr. Price met with Fletcher Jackson at the United States Attorney's office, did Mr. Jackson indicate to you whether Mr. Hale was facing indictment on one or more felony charges?
A Yes.
Q Is that what Mr. Jackson indicated, that there would be one or more felony charges included in an indictment?
A Yes.
Q To your knowledge, did Mr. Hale become aware of that information, either from you or from Mr. Price after that meeting?
A Yes.
Q Did you tell Mr. Hale that?
A Yes.
Q Now, your representation of Mr. Hale continued on for a short period of time after your meeting with Mr. Jackson?
A Very short, yes.
Q At any time during your representation of Mr. Hale, did Mr. Hale say anything to you about any

42

of the allegations that he has subsequently made against Mr. Clinton or Mr. Tucker?
A No.
Q Did you discuss with Mr. Hale any of the allegations against him that were being leveled by the United States Attorney's office?
A Yes.
Q And in none of those discussions did Mr. Hale make any statement to you indicating that he had information about possible criminal wrongdoing by either Mr. Clinton or Mr. Tucker?
A No.
MR. KRAVITZ: Thank you very much.
MR. GICALE: A couple other questions.
EXAMINATION
BY MR. GICALE:
Q Did you talk to anyone during that same time period, May 5, 1993 -- strike that.
Did you learn in your discussions with Mr. Jackson that there might be also an investigation of Madison Guaranty?
A No.

43

Q Did you talk to anyone in Washington between May 5, 1993 and November 8, 1993 about a potential investigation of Madison Guaranty or Whitewater?
A No.
Q Did you ever indicate to anyone that you were going to Washington or you knew someone who was going to Washington to have the investigation with respect to Mr. Hale or Madison Guaranty quashed?
A No.
Q Now, earlier we went through -- we started to go through a list of people that you knew at the White House, and you indicated -- we went through a number of people.
In the other instances where you did visit, who were you there to visit?
A I don't remember. I mean, you know, I don't recall. I remember having -- I don't remember what period. I do remember having lunch with Joe Vincent Foster.
Q And I want to make sure this is the case. You testified you did not talk to Vincent Foster

44

about the Hale investigation?
A I did not talk to Vincent Foster about the Hale investigation.
MR. GICALE: You have to go at this point?
THE WITNESS: Yes, unless -- if we think we can conclude in about five minutes.
MR. GICALE: If you can give me one minute, I think that we can. Could you allow one minute?
THE WITNESS: Sure.
MR. GICALE: Thank you.
(Pause.)
BY MR. GICALE:
Q Mr. Mays, the other instances when you've been at the White House, those were social occasions to visit people?
A Yes.
Q In any of the instances, have you ever discussed the Hale investigation?
A No.
Q Did you talk to anybody about the substance of your testimony before testifying today?
A No.

45

Q Did you call Mr. Hubbell in April, May and June of 1993?
A I don't know. I could have.
Q Specifically, did you call him on April 2, 1993?
A I don't recall. It's possible. I don't know.
Q Did you call him on May 12, 1993?
A Call him on May 12, 1993?
Q Yes.
A I don't know. I mean, I may have.
Q Did you call him on May 13, 1993?
A I don't recall when I called him. I did call him. I don't know during what time period, but I have called Mr. Hubbell.
Q What did you call him about?
A I don't really recall, but I know it wasn't about David Hale.
Q What was it about?
A I don't know. I can't remember what we talked about, but maybe I was just coming to Washington and wanted to go to lunch. I mean, I

46

don't really remember. Nothing really of substance.
Q Did you talk to him on June 2nd?
A I don't remember.
Q Did you talk to him on October 26, 1993?
A I don't remember.
Q And if you talked to him, or if you left a message for him, do you remember what that was about?
A If I did, it was about meeting him for lunch, having a drink with him or just to socialize with him.
Q Was he a close friend of yours?
A He was a pretty close friend of mine. I knew him pretty well. We served on some county committees in Pulaski County together, and so I would consider him a pretty good friend.
Q Have you talked to James Blair about the Hale investigation?
A No.
Q Or the Tucker investigation?
A No.
MR. GICALE: I don't believe I have anything else. Thank you very much.

THE WITNESS: Thank you.
MR. KRAVITZ: Thank you, Mr. Mays.
(Whereupon, at 12:08 p.m., the deposition was concluded.)

RICHARD L. MAYS

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, JULIE BAKER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Julie Baker

Notary Public in and for the
District of Columbia

My Commission Expires SEPTEMBER 30, 1997

DEPOSITION OF EDITH E. HOLIDAY
IN RE: S. RES. 120

MONDAY, NOVEMBER 27, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of EDITH E. HOLIDAY, called for examination pursuant to notice of deposition, at 1:35 p.m. in Room 534 of the Dirksen Senate Office Building, before JOANNE LIVERANI, a Notary Public within and for the District of Columbia, when were present:

LOUIS J. GICALE, ESQ.
Majority Deputy Special Counsel
LANCE COLE, ESQ.
Minority Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

JONATHAN D. SCHILLER, ESQ.
Kaye, Scholer, Fierman, Hays & Handler
901 Fifteenth Street, NW
Washington, DC 20005
On behalf of the Deponent.

ALSO PRESENT: TIMOTHY P. MITCHELL

CONTENTS

WITNESS	EXAMINATION
Edith E. Holiday	
by Mr. Gicale	3
by Mr. Cole	13
by Mr. Schiller	33
by Mr. Cole	35

PROCEEDINGS

Whereupon,

EDITH E. HOLIDAY

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. GICALE:

Q Could you please state your name for the record.

A Edith E. Holiday.

Q And how do you spell that?

A E-d-i-t-h, E., H-o-l-i-d-a-y.

Q And could you please -- are you presently employed?

A I am self-employed.

Q You indicated you were self-employed. In

what business?

A I presently serve as a member of the board of directors of six corporations.

Q Which corporations?

A Amerada Hess Corporation, A-m-e-r-a-d-a, H-e-s-s, Corporation; Bessemer Trust Company, I am actually on two of their boards. One is Bessemer Trust Company of New Jersey, B-e-s-s-e-m-e-r, Trust, T-r-u-s-t, Company, and the other is Bessemer Trust Company NA. Beverly Enterprises, B-e-v-e-r-l-y, Enterprises Incorporated; Hercules, H-e-r-c-u-l-e-s, Incorporated; H.J. Heinz Company, H-e-i-n-z.

Q Now, between September 1992 and January 1993, where were you employed?

A The White House.

Q In what capacity?

A Assistant to the President and Secretary of the Cabinet.

Q When were you appointed to those positions?

A June 1990.

Q You were appointed to both those positions on that date?

5

A Yes.
Q And you held both of those positions until January of 1993?
A Yes.
MR. GICALE: Now, prior to this deposition, we had an off-the-record discussion with Mr. Cole, from the Minority, who did contact you last week, and did not make a request for documents at this point. And we've indicated prior to your deposition, that depending on your testimony, we would determine whether there will be subsequent requests for documents.
MR. SCHILLER: May I make a statement?
MR. GICALE: Sure.
MR. SCHILLER: Probably should have at the outset.
MR. GICALE: State your name for the record. You have his name.
MR. SCHILLER: My name is Jonathan Schiller. And my statement is limited to the fact that Ms. Holiday's appearing voluntarily today, and intends to cooperate with the legal team of the

6

Committee as best she can. And if there are some documents, such as a calendar as Mr. Cole indicated a moment ago, she would certainly do her best to identify, cooperate in producing it to you. But I did want to note for the benefit of the record, the voluntary appearance and her intent to cooperate.
MR. COLE: I would also like to note for the record, we very much appreciate her appearing here on such short notice. Her name came up late in our discovery process and we are grateful for her appearing.
MR. GICALE: Likewise. The only reason I reference the request for documents, normally we have those requests and we ask of the witnesses whether or not they have searched the records for responsive documents and because we did call you at a late date, a request was not sent out, and because of the fact that your name was not mentioned until sometime late in the process.
BY MR. GICALE:
Q Now, I note that you do have an attorney of record, Jonathan Schiller. Have you spoken to anyone

other than Mr. Schiller, prior to today's deposition, with respect to the substance of your testimony today?

A Only to the independent counsel --

Q Okay.

A -- who raised questions with me.

Q Have you spoken to anybody else with respect --

A My husband.

Q Okay. Anyone else other than those people?

A No, sir.

Q Ms. Holiday, this deposition is being conducted pursuant to Senate Resolution 120. The resolution establishes a special committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Savings & Loan Association, Capital Management Services, Inc., the Arkansas Development Finance Authority, and other related matters.

Section 1(b)(2)(C) of Senate Resolution 120 authorizes an investigation and public hearings into

whether the Department of Justice has improperly handled RTC criminal referrals relating to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation.

You were requested to testify last week. This deposition is being taken in advance of a public hearing which will continue this week. It's possible that you may testify.

We will be asking you a series of questions. You, of course, are testifying under oath. If you don't understand a question, let us know and we will rephrase it. The stenographer is preparing a record of questions and answers. The deposition will be treated as committee confidential until the commencement of the hearings.

Prior to the hearings you will receive a letter from the Committee telling you that you may come to the Senate to review the transcript of your deposition and make note of any corrections for transcription on an errata sheet. As you are being called to testify in a public hearing, you will be permitted to have a copy of your deposition

transcript four days in advance of your testimony. You may be represented by counsel, and Mr. Schiller is here on your behalf.

Objections to the form of questions will be noted for the record. Counsel may object on grounds of privilege or relevance. The committee chairman may rule on objections where the witness refuses to answer a question.

Do you have any questions at this point?

A No.

Q Directing your attention to September of 1992, did you ask then-Attorney General Barr if he would have been aware of an S&L matter involving one of the candidates during that election, and whether or not -- whether he would know whether or not such a matter was pending at the Department of Justice?

A Let me start by saying I am aware of a conversation that has occurred with Bill Barr. I now know it to have been in September of 1992, although that was not a date or time that stood out in my memory, but through this process, have reconstructed that as being the time.

But I have only a very general memory of that conversation. I do not remember specifically what was said. But I remember it to be a conversation about politics.

Q What do you remember about the conversation?

A I remember that we were traveling from Atlanta to Washington, and were seated together. It was a surprise to me that Bill was on the plane. I had been with the President in Atlanta. I did not expect him to be with us traveling, and we happened to be seated together.

I remember a very broad political discussion. Precisely the words used and the issues discussed, I do not remember.

I do remember, having thought about it and having the benefit of conversations that brought this matter to my attention, I do recall having mentioned to him a news article, or news articles, in the context of a political discussion, that concerned a savings and loan that had relationships with the Clintons.

11

And then I remember only that I was, at the time, lamenting political coverage, press coverage that I thought was -- had not been full in this area, and that I was troubled by the story. And I remember that Bill seemed unfamiliar with what I was talking about.

Q Do you know which press article or articles you were referring to at the time?

A I -- I have -- in preparing for this, have gone back and looked or tried to look at what would have been in my mind. And I -- it stands out to me that it could have been a New York Times article, but I don't remember specifically.

I know that there were several articles that had occurred in the months prior to this time, but I cannot describe precisely what they are.

Q Well, in discussing that article or some article with Mr. Barr, as a part of that conversation, did you ask him whether he would have been aware of whether or not there was an S&L matter involving the Clintons or one of the candidates in the Department of Justice?

12

A I just -- I don't recall the specific conversation we had about this story. I just -- I don't recall the words used. I know that -- I just know that at the time, it was a politically frustrating time, and that, in the context of a broad ranging political conversation, I believe that that was discussed. But the words used, and what I said to him, what he said to me, I simply do not recall.

Q And is that the extent of the conversation that you recall on the plane that day?

A Yes.

Q Do you recall having a subsequent conversation with him where he indicated that the rumors that you had possibly discussed were completely baseless?

A I don't recall a further conversation with him about this. I had regular conversations with cabinet officers as part of my ongoing daily activities, but I do not recall a subsequent conversation about this.

Q And earlier I directed you to September of 1992. Between August of 1992 and the time of the

13

election, do you remember any other conversation with them with respect to this?

A No, I do not.

Q Did anyone prompt you to have this conversation with him?

A No.

Q Was anyone else present when you had this conversation?

A There wasn't another person sitting in proximity to us that I recall, although there were plenty of other people on the plane. But I can't -- I don't think anyone was sitting in our immediate area. Although there were other travelers certainly milling about, but I don't recall anyone participating in the conversation with us.

Q Do you know whether or not he referenced the Silverado matter in the --

A I do not recall.

MR. GICALE: I have nothing further at this point.

EXAMINATION

BY MR. COLE:

14

Q Ms. Holiday, as I indicated earlier, I am Lance Cole. I am the Minority counsel to the Committee. Am I correct in understanding you are an attorney?

A Yes.

Q Could you, for the record, describe your professional background since graduation from law school, the positions you've held, and your responsibilities in those positions.

A After graduating from law school, I became an associate at Reed, Smith, Shaw & McClay; R-e-e-d, Smith, S-h-a-w, and McClay, M-c-C-l-a-y; Washington, D.C.

In 19 -- let's see, that was 1977. In 1982, I took a leave of absence from that position, and served as a legislative assistant to then-Senator Nicholas F. Brady. I returned -- I became his legislative director during the course of the year in 1982, and returned to my law firm, Reed, Smith, Shaw & McClay in Washington in 1983.

I served with that firm until later in 1983, when I moved to Atlanta, Georgia, and was an

15

attorney at the firm of Dow, Lohnes & Albertson, D-o-w, L-o-h-n-e-s and Albertson. In 1984, I became executive director of the commission on legislative -- executive legislative and judicial salaries in Washington, D.C., served in that position until 1985.

In August of 1985 I became counsel, if you will, to the political action committee known as Fund for America's Future in Washington, D.C. And then in 1987, I became counsel, and operations and administrative director, of George Bush for President. In 1988, I became chief counsel, national operations, the financial director of Bush/Quayle. And later in 1988, I became assistant secretary of the Treasury for public affairs and public liaison. I was confirmed by the Senate in the Reagan Administration. And then 1989, I became general counsel of the Treasury. In 1990, I assumed the White House position we discussed earlier.

Q And if I could focus on the positions you held at the Department of Treasury in 1988 and 1989, beginning with your appointment in the public affairs

16

department, what were your responsibilities in that position?

A Well, I was the Secretary's chief spokesman, and served the Treasury Department's press and public affairs function, and related to the public in a variety of ways, including the public liaison, handled the -- the many interested outside constituents, if you will, of the Treasury Department.

Q I should know this, but was Mr. Brady the Secretary of the Treasury at that time?

A He was.

Q Was he -- he continued to be the Secretary of the Treasury in 1989?

A Yes.

Q In your capacity in the public affairs department, did you have occasion to deal with the federal regulatory agencies that oversaw financial institutions such as S&Ls?

A Yes.

Q What were your duties in that regard, starting in 1988 and prior to your appointment as

17

general counsel?
A Prior --
Q Still focusing on your time in public affairs.
A Well, I don't recall specific instances but my duties included handling the press, that would be the Treasury Department's key issues surrounding the Treasury. And to the extent that there were joint issues, press related or public affairs related, I would have had the responsibility of coordination, to the extent that they existed.
There are certain regulatory arms of the Treasury Department and of course those parts were within my responsibility as it pertained to press. And then -- did you ask me into '89 or were you still focusing --
Q My next question was going to be '89, after you were appointed general counsel in '89; is that correct?
A Yes.
Q What were your responsibilities in terms of financial institutions, oversight in that position?

18

A Well, I had general responsibility for the legal affairs of the Treasury Department, which meant that the various arms of the Treasury Department, including financial areas, were served by lawyers on my staff, so I had the general coordinating function, management function of those lawyers that served those parts of the Treasury Department.
Now, the controllers's office had lawyers within its function that reported through a chain of command to me. But there -- that was in the general management responsibility. It did not, except for the top lawyer, did not report up.
Q Did you have occasion to have contact with officials of the Resolution Trust Corporation, in your capacity as general counsel of the Department of the Treasury?
A Yes, but I cannot recall specifics.
Q Can you recall with whom at the Resolution Trust Corporation you would have had contact during that period?
A Dan Carney was the head of the RTC. I knew him during his tenure and had conversations with

him.
Q Were there other senior officials at the RTC that you had contact with?
A None that I recall precisely. None that I recall. I'm sure I must have from time to time, although I don't recall.
Q Did you know a Mr. William Roelle who was an RTC official?
A I know the name. I have heard the name before but I don't recall knowing him personally.
Q And when you were answering Mr. Gicale's questions about the conversation you had with Mr. Barr, you indicated that you had a concern about the press coverage of, I think you said "the matter."
Can you tell me what your concerns were, and what the matter was that you had concerns about press coverage?
A I -- again, to put this in context, Bill Barr and I are -- have been friends for a long time. We have worked together in various capacities. I was referencing the story, the articles that seemed to be

troublesome to me politically. And I thought that the press generally had been less critical of the candidate Clinton than they had of President Bush. And therefore I was troubled by the fact that it had not received more attention. And I was discussing this in the context of many -- a broad-ranging political discussion with Bill Barr.
Q To be as specific as we can be for our record here, you have said stories regarding the candidates and of course there were many articles about the candidates on many subjects. Are you referring to stories that appeared concerning Whitewater Development Corporation and related matters, or are you speaking -- did you speak with Mr. Barr about broader subjects including other things having to do with then Governor Clinton?
A Well, at that point in the campaign, in September of 1992, there were only two candidates -- well, that's not true. Ross Perot. Excuse me. I can't remember whether he was in or out during that period of time. But I -- the discussion was around the campaign. It was about the presidential

campaign.
Q I'm sorry. Perhaps my question wasn't clear. What I am asking is, the press coverage or the articles that you discussed with Mr. Barr, were those articles about Mr. Clinton generally or articles specifically about what's come to be known as the Whitewater matter?
A Well, I think in the course of my conversation with him generally, I talked -- I think we talked about a lot of the issues of the day, the subjects of which I do not recall, but about -- general political discussion of the someday, what was happening in the campaign, if that's what you mean.
But I do now recall mentioning a series of articles that were about what has come to be known as Whitewater, but I don't -- at the time it was not -- it was in the context of a general concern that the Clintons were not getting the same level of press coverage that I felt we were -- the scrutiny that we were experiencing with the press.
Q You testified earlier that you have since been able to determine, or your recollection has been

refreshed and you have been able to determine that this conversation took place in September of 1992?
A I only believe that -- I wouldn't have been able to place that, except for the fact that this occurred in a trip to Atlanta, that I have been able now to reconstruct as having occurred in September. I would not independently have known that's when it was.
MR. GICALE: I think, Mr. Schiller, this might be an appropriate time to request that if Ms. Holiday has any records of that trip still in existence that might confirm the time, I think it would be helpful to the Committee if we could request those, speaking in terms of plane receipts -- or plane tickets or receipts or anything that would confirm the date. We have made the same request of Mr. Barr.
BY MR. GICALE:
Q But focusing then on that time period, of September of 1992, do you remember whether there were particular articles, at or about that time, that prompted you to raise the issue with Mr. Barr of the

23

press coverage?
A I believe that there were several different articles over the course of the months preceding that.
Q And do you recall whether those articles had to do with the Clintons' Whitewater investment?
A I believe -- that's the reason why I was talking about it.
Q Well, as you and your counsel might expect, we have had a lot of opportunity to review the record in this matter, and I wanted to try -- I don't know whether this will be helpful in refreshing your recollection or not, but we found in our review of databases, in newspapers that there was news coverage in March of 1992, when the Whitewater story, as it is known, first broke in The New York Times and then through the end of March when there was a report by an attorney, James Lyons, published as the Whitewater report?
A I missed what you said, the timing.
Q The timing was, in March 1992, there were several stories about the Clintons' Whitewater

24

investments and follow-up stories on Whitewater by an attorney in Denver, James Lyons. Did I make a copy for you and your counsel? The only -- those in fact appeared in late July and early August, but I thought that perhaps I could show those to you and see if they might refresh your recollection.
And since these aren't Bates numbered and I can't make Bates reference to them, I will give the reporter a copy, and they can be attached and I will mark one as Exhibit 1 and one as Exhibit 2. Just for the record I will mark the first story, a July 21, 1992 Washington Post story, as Holiday Exhibit 1, and give that to the reporter for the record; and the second story which is an August 1st, 1992 Washington Post article, I will mark as Holiday Exhibit 2.
And take as much time as you would like, Ms. Holiday, but if you would look at those articles and tell me then if you recall reading them or having them in mind when you spoke with Mr. Barr. Those are the only ones in that time frame and I won't burden the record with them. Then we have articles in July and August of 1992.

25

MR. SCHILLER: Let me ask you to read the entire articles, please.

(Pause.)

THE WITNESS: Do you have a question?

BY MR. COLE:

Q My question is, having had an opportunity to look at these articles, whether this refreshes your recollection as to whether these articles refer to the subject matter that you discussed with Mr. Barr?

A Well, I don't have a specific recollection of these particular articles, and -- but these are -- I read the Washington Post. These are -- I read The New York Times, which was referenced here.

This is the subject matter that I was referencing to him, and which I had the impression he was unfamiliar.

Q And at that time, September of 1992, when you had this discussion with Mr. Barr, did you have any responsibilities in connection with the Bush presidential campaign that was underway at that time?

A I had a responsibility which was the

26

following: I was not on the campaign staff but I was a person who aided or facilitated the processing of campaign requests for information relating to presidential speeches or policy matters that were needed from the government, so that there was a vehicle through which those kinds of requests would come.

Q And, in that capacity, did you obtain or receive information from the campaign in terms of campaign strategy or information that was being collected about candidates?

A I don't understand the nature of the question.

Q What I am getting at, and perhaps I could ask it more clearly, is whether you had sources other than publicly reported information such as newspaper articles, media reports? Did you have other sources of information about the Clintons and the presidential campaign? Were you receiving information from the Bush campaign?

A I was not on the campaign staff. I was not involved in campaign strategy. Did I receive

27

information that was not public information about the campaign? I think it is probably likely that I did, but I don't specifically recall it.

Q Do you recall discussing the matters that you have indicated you discussed with Mr. Barr, that is the press coverage of the Clintons, particularly the press coverage on Whitewater matters, with officials of the Bush campaign?

A I do not recall specific conversations with them, although I'm sure, given our political circumstances, that it was the common theme among campaign officials and White House officials, to believe that we were not receiving fair press coverage.

Q Was there something specific in terms of the press coverage that you believed was lacking at that time --

A Just --

Q -- press coverage of the Clintons?

A Nothing specific, just a general view that their coverage was better than our coverage was, that they were treated more fairly, if you will.

28

Q Were there any matters that you were aware of, that were not reported in the press, that you felt should have been reported in the press or would have preferred to have had reported in the press?

A No.

MR. GICALE: I guess I would object to the relevance of that. I mean, I think what we really -- we need to be focusing on whether there is information related to this and whether there were other kinds of issues. I just --

MR. COLE: Perhaps I can put it in context.

BY MR. COLE:

Q There is some difference in Mr. Barr's recollection of, at least as he testified before the Committee, of the conversation in that he testified, as Mr. Gicale implicitly indicated in his question, that you asked him if he would be aware if there was a matter before the Justice Department involving the Clintons. You've testified that your recollection of the discussion is more general than that, if I understand your testimony?

29

A Yes.
Q What I am trying to understand is, whether your recollection is correct or Mr. Barr's recollection is correct, what there would have been that you would have asked Mr. Barr about at that time, leaving aside the exact words that you used, and I've looked at these articles and there is nothing in these articles at least as -- and that's why I wanted to show them to you and your counsel -- that indicates that there was any investigation by the Department of Justice or any matter involving a regulatory matter involving a bank or a thrift.
And it is that difference between your recollection and Mr. Barr's that I am trying to probe here, so any testimony you could provide --
A I don't recall asking anything of Bill Barr, or asking him to do anything. I recall a general political conversation, that had, as a general -- as one part of it, a reference to news accounts. Now, I believe that the earlier New York Times story has a more in-depth presentation of this, as I've looked back in preparation for this, that

30

relates more specifically to the actions involved, although these are more in context, in time contemporaneous to when this conversation was.
But the material referenced here is the general kind of discussion that I mentioned as part of a very -- a plane ride back from Atlanta, hour and a half, 45 minutes, contained.
Q Did there ever come a time when you learned that there was a government investigation in which the Clintons were named as potential witnesses or witnesses?
A Only in press accounts; that I only know about from press accounts, and I am not specific in that.
Q Is it your recollection that that was after the presidential election?
A I assume it was, but I don't remember. I assume it was after, the press accounts. I don't -- I haven't followed this closely.
Q Did you report on your discussion with Mr. Barr, or relate your discussion with Mr. Barr to anyone else in the White House, after it occurred?

31

A I have no recollection of speaking to anyone about my conversation with Bill. It is likely, however, that I noted to my staff that he was on the plane and may have -- may have just, if they asked what we talked about, because we -- excuse me, that was our job, to know what was on the mind of the various cabinet officials.

I was, I think I mentioned, surprised that he was on the plane. I had not expected him to be there, and since that was part of my job to know where --

Q Was that a commercial flight?

A No, that was Air Force One.

Q Air Force One?

A I may have commented --

MR. COLE: You want to take a break?

MR. SCHILLER: This record will not be improved by "may haves" and "might haves."

THE WITNESS: I do not recall having any substantive conversation with anyone about this at all.

BY MR. COLE:

32

Q So that would include both campaign officials and White House officials?

A Absolutely. I recall no subsequent conversation whatsoever about this with any campaign or White House officials.

MR. COLE: I think I may be finished. If I can just take a moment to consult with my colleague here.

THE WITNESS: Certainly.

MR. COLE: I don't have anything further at this time. Mr. Gicale?

MR. GICALE: I don't have anything further.

MR. SCHILLER: I just have one question. And it has to do with your --

MR. GICALE: Do you want this on the record or off the record? Is this a process question or --

MR. SCHILLER: No, substantive question. I think the record would benefit from this question. It wasn't brought out by either of you but it is a follow-up question to one you posed. Both of you asked Ms. Holiday what she could recall about her

33

conversation with Mr. Barr. And she mentioned -- my notes indicate that when she expressed the fact that the information she was reading troubled her, and that he seemed unfamiliar with it.

Neither of you followed up and asked what, if anything, she said to him about the lack of familiarity he had with it.

EXAMINATION

BY MR. SCHILLER:

Q Do you recall discussing with Mr. Barr what the source was of your information with which he was unfamiliar?

A Well, I recall referencing news articles, and in effect, bringing them to his attention, because he, as I was describing what I had read, seemed unfamiliar with what I was referencing. And when I -- that surprised me, because I know Bill and have known him for quite some time, and know him to be a political observer, and he follows politics. And it surprised me that Bill Barr would not have seen or known of these stories.

MR. COLE: I am glad Mr. Schiller asked

34

that question because I must confess I am confused what the stories were that you were surprised Mr. Barr was unaware of. Whether you are talking about the March Whitewater New York Times stories or subsequent, I don't understand what the stories were.

MR. SCHILLER: I think she referenced already it was the Times stories, and she said these two articles in the Post that you put in front of her are reflective of the kinds of articles that she would have been reading every day and was reading every day which talked about what has now become Whitewater and mentioned the savings and loan, at least the one you put in front of her, Exhibit 1 did, in July, that McDougal was the, quote, "owner of a state savings and loan," close quote, both reference talk about the sources of information -- the sources attributed in the article declined to provide the journalist with additional information.

So someone reading this, as Ms. Holiday says she likely did, would have been struck by the omissions in these articles, as she has testified about.

35

She hasn't identified specific language in here talking about savings and loan issues, as much as loans, investments, a savings and loan, McDougal, this area has mushroomed into what it is today, it wasn't that then.

MR. COLE: What my question goes to -- if we can be as precise as we can about this.

When you say you were surprised by Mr. Barr's lack of knowledge, are you referring to his lack of general political knowledge of this issue, or alternatively are you referring to some lack of knowledge relating to his official duties as Attorney General of the United States?

THE WITNESS: Certainly the former, not the latter. I was concerned -- not concerned, I was surprised that he was unaware of these political stories, that had existed in the press, for some months, and he seemed totally unfamiliar with the existence of this story.

EXAMINATION

BY MR. COLE:

Q And the reason you were surprised that he

36

was unfamiliar with it, several months -- or, at least the initial articles in The New York Times, was because he was a politically appointed Cabinet official and you would have expected him to --

A Well, that I know him well, we have talked politics over the years, on many occasions. And I -- I knew that he was an avid reader of newspapers. He kept up with politics. He, on any number of occasions, when I would see him, he would be asking me what -- what's going on in the campaign, what do you think of this poll, that poll, this kind of general political conversation.

So, it was something that I would have thought he would have read in the major news publications and known about, and I was surprised that he didn't.

Q Was it your impression that he had never heard of Whitewater?

A Of what -- of this whole line of stories, yes, the subject matter, quote, Whitewater.

Q And did you suggest to him that he might wish to learn more about this matter?

A I didn't suggest -- I told him about the articles, and asked him -- I did not ask him to do anything. I just told him, as I recall generally -- I don't remember the specific words -- that they were news articles.

Q Do you have a view one way or another, as to whether you might have asked him whether he would be aware of a matter like this in the Department of Justice, if such a matter were under review with the Department of Justice?

A I simply do not recall asking him that, or speaking those words. I have no memory of saying that to him.

Q Would that have been -- if you had been inclined to ask him that question, would your understanding at the time have been that that would have been an appropriate question for you to ask?

MR. GICALE: I am going to object to the speculation.

She doesn't even go so far as to say she recalls --

MR. COLE: Let me rephrase the question

then.

BY MR. COLE:

Q As a former general counsel of the Department of Treasury and an attorney, would it have been appropriate for you, as a White House official, to have asked Mr. Barr about a Justice Department investigation?

A Would it have been appropriate for me as a White House official to have asked a Justice Department official about a -- it could be appropriate. I mean it depends on the situation and the investigation and what it would be. It would take a knowledge of facts and circumstances that I couldn't --

Q But you have no recollection of having asked that question?

A I have no recollection of having asked that question.

MR. COLE: I don't have any further questions.

MR. GICALE: I don't have anything.

MR. COLE: Thank you very much.

(Whereupon, at 2:16 p.m., the deposition was concluded.)

EDITH E. HOLIDAY

CERTIFICATE OF NOTARY PUBLIC & REPORTER 40

I, JOANNE LIVERANI , the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Joanne Liverani

Notary Public in and for the
District of Columbia

My Commission Expires JULY 31, 2000

DEPONENT Edith E. Holiday

ERRATA

PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
3-4	17-12	delete in entirety		personal information
25	17	"was unfamiliar"	"he was unfamiliar"	word "he" is omitted

BOSTON PUBLIC LIBRARY
3 9999 05577 619 7

ISBN 0-16-055349-0
90000
9 780160 553493